

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: LLS AMERICA, LLC,

Debtor.

Nos. 15-35976
15-35985

D.C. No. 2:12-cv-00668-RMP

BRUCE P. KRIEGMAN, solely in his
capacity as court appointed Chapter 11
Trustee for LLS America LLC,

Plaintiff-Appellee,

MEMORANDUM*

v.

DAVID VAN PERRY,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

David Van Perry appeals pro se from the district court's judgment after a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes these cases are suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

bench trial directing Perry to repay proceeds he received from debtor LLS America, LLC. We have jurisdiction under 28 U.S.C. § 1291. We review for clear error the district court's findings of fact, and de novo the district court's conclusions of law. *OneBeacon Ins. Co. v. Haas Indus., Inc.*, 634 F.3d 1092, 1096 (9th Cir. 2011). We affirm.

The district court properly concluded that the law of the case doctrine applied to its earlier ruling that LLS America, LLC engaged in a Ponzi scheme because Perry failed to establish any basis for departing from the doctrine. *See Thomas v. Bible*, 983 F.2d 152, 155 (9th Cir. 1993) (noting the limited discretion of a court not to apply the law of the case and setting forth requisite conditions).

The district court did not abuse its discretion by denying Perry's post-judgment motion construed as a motion under Federal Rule of Civil Procedure 59 because Perry failed to set forth any basis for relief. *See Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (grounds for a new trial under Fed. R. Civ. P. 59(a)); *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (grounds for relief under Fed. R. Civ. P. 59(e)).

We reject as unsupported by the record Perry's contention that service of process was faulty.

We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts

not presented to the district court are not part of the record on appeal.”).

All pending requests and motions are denied.

AFFIRMED.