

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2018

FOR THE NINTH CIRCUIT

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

FRANK KONARSKI; et al.,

Plaintiffs-Appellants,

v.

CITY OF TUCSON; et al.,

Defendants-Appellees.

No. 16-16789

D.C. No. 4:16-cv-00592-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, District Judge, Presiding

Submitted September 12, 2018**

Before: LEAVY, HAWKINS, and TALLMAN, Circuit Judges.

Frank, Gabriela, John, and Frank E. Konarski appeal pro se from the district court's order dismissing their action for failure to comply with a vexatious litigant pre-filing order. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002), and

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

we affirm.

The district court did not abuse its discretion in dismissing the Konarskis' action because the Konarskis failed to comply with the pre-filing order that declared them vexatious litigants and required them to obtain leave of court before filing a complaint in the district court. *See id.* at 642 (discussing the factors for determining whether to dismiss for failure to comply with a court order); *In re Fillbach*, 223 F.3d 1089, 1090 (9th Cir. 2000) (a district court has discretion to dismiss an action for failure to comply with a vexatious litigant pre-filing order).

We reject as unsupported by the record the Konarskis' contentions that the district court violated due process by enforcing the pre-filing order without issuing an order to show cause, and expanded the requirements of the pre-filing order entered against them.

Because we affirm, we deny as unnecessary the Konarskis' request for reassignment to a new district judge on remand, set forth in their opening brief.

Appellees' motion for leave to file an answering brief (Docket Entry No. 15) is denied.

AFFIRMED.