

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2021

FOR THE NINTH CIRCUIT

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

LACEY MARK SIVAK,

No. 20-35216

Plaintiff-Appellant,

D.C. No. 1:19-cv-00234-DCN

v.

MEMORANDUM*

JOHN DOE,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted February 17, 2021**

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

Idaho state prisoner Lacey Mark Sivak appeals pro se from the district court's judgment dismissing for failure to comply with a court order his action alleging federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a district court's dismissal under Federal Rule of Civil

* 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).

Procedure 41(b). *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). We affirm.

The district court did not abuse its discretion in dismissing Sivak's action after warning him that failure to pay the filing fee or apply for in forma pauperis status would result in dismissal. *See id.* at 1260-63 (setting forth factors for determining whether a pro se action should be dismissed under Rule 41(b) and requiring "a definite and firm conviction" that the district court "committed a clear error of judgment" in order to overturn such a dismissal (citation and internal quotation marks omitted)); *see also* 28 U.S.C. § 1915 (an action may proceed without the payment of filing fees only upon granting of in forma pauperis status).

We reject as without merit Sivak's contentions of bias or misconduct on the part of the district judge and district court clerk.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

AFFIRMED.