

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2021

FOR THE NINTH CIRCUIT

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

WILLIAM J. MYERS, Jr.,

No. 20-17120

Plaintiff-Appellant,

D.C. No. 2:19-cv-05683-SMB

v.

MEMORANDUM*

LEAH SHAY FREED,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Arizona

Susan M. Brnovich, District Judge, Presiding

Submitted August 17, 2021**

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

William J. Myers, Jr. appeals pro se from the district court's order denying his motion to set aside the judgment. We have jurisdiction under 28 U.S.C.

§ 1291. We review for an abuse of a discretion. *United States v. Estate of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011). We affirm.

* 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). Myers's requests for oral argument, set forth in the opening and reply briefs, are denied.

The district court did not abuse its discretion by denying Myers's motion for relief under Federal Rule of Civil Procedure 60(d)(3) because Myers failed to establish by clear and convincing evidence a fraud on the court. *See id.* at 443-45 (under Rule 60(d)(3) a party must establish fraud on the court by clear and convincing evidence).

Defendant's request for appellate attorney's fees and costs, set forth in the answering brief, is denied without prejudice. *See* Fed. R. App. P. 38 (requiring a separate motion for fees and costs); *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 828 (9th Cir. 2009) (a request made in an appellate brief does not satisfy Rule 38).

All pending motions (Docket Entry Nos. 17, 18, and 22) are denied.

AFFIRMED.