

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 3 2023

FOR THE NINTH CIRCUIT

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

BRENDA C. NORMAN; DAVID
NORMAN, Husband and Wife,

Plaintiffs-Appellants,

v.

RANCHO DEL LAGO COMMUNITY
ASSOCIATION, an Arizona non-profit
corporation,

Defendant-Appellee.

No. 22-15111

D.C. No.
4:19-cv-00486-JAS-LCK

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James Alan Soto, District Judge, Presiding

Argued and Submitted December 9, 2022
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and GLEASON,** District
Judge.

Brenda and David Norman (the Normans) filed the underlying complaint
alleging that the Rancho Del Lago Community Association (RDL) violated the Fair

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

** The Honorable Sharon L. Gleason, Chief United States District Judge
for the District of Alaska, sitting by designation.

Housing Act (FHA), 42 U.S.C. § 3601 *et seq.*, by denying the Normans' request for approval of an 11-foot-wide second driveway on their property as an accommodation for Brenda Norman's walking disability.

The district court adopted the magistrate judge's Report and Recommendation in full and granted summary judgment to RDL on this claim because the Normans failed to make the requisite showing that the 11-foot-wide driveway was a necessary accommodation under the FHA. *See Dubois v. Ass'n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006) (citing 42 U.S.C. § 3604(f)(3)(B)). The Normans appeal that decision here. We have jurisdiction pursuant to 28 U.S.C. § 1291 and we affirm.

To prove necessity, the Normans had to "show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice." *Giebler v. M & B Assocs.*, 343 F.3d 1143, 1155 (9th Cir. 2003) (quoting *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996)). In her sworn declaration, Brenda Norman stated that the second driveway is "medically necessary and reasonable." But this declaration contradicts Brenda Norman's statements to RDL's owner and manager, Spencer Brod, that a walkway half the width of the second driveway would suffice. Her acknowledgment that the walkway would accommodate her disability belies her assertion that an 11-foot-wide driveway is necessary to accommodate her disability. Moreover, her declaration's

statement that the driveway is “medically necessary and reasonable” is conclusory, and such conclusory statements that are unsupported by the record are not sufficient to defeat a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001). While Brenda Norman’s treating physicians established that she needs a “solid walking surface,” they acknowledged only that the 11-foot-wide second driveway is a “suitable accommodation,” and not a necessary one. Based on this record, the Normans did not prove that a second 11-foot-wide driveway is a necessary accommodation.

The Normans assert that the district court erred by adopting the magistrate judge’s Report and Recommendation because it made several errors with respect to the reasonableness inquiry. But the report did not reach the question of reasonableness, deciding instead that the Normans failed to prove necessity. Since the lack of proof of necessity was dispositive, there was no need for the district court to reach, or for us to address, reasonableness. *See United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 (9th Cir. 1997) (affirming the judgment for defendants because the plaintiff “failed to introduce any evidence of an essential element of a prima facie case under 42 U.S.C. § 3604(f)(3)” by “fail[ing] to show that the [proposed accommodation] ‘may be necessary’ to afford her an equal opportunity to use and enjoy her dwelling”).

We also do not reach the question of punitive damages because the Normans were unable to show that they experienced a discriminatory housing practice. *See* 42 U.S.C. § 3613(c)(1) (“[I]f the court finds that a discriminatory housing practice has occurred . . . the court may award the plaintiff . . . punitive damages . . .”).

AFFIRMED.