

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 28 2023

FOR THE NINTH CIRCUIT

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

MELISSA CALABRESE, Dorothy  
Calabrese Guardian Ad Litem,

Plaintiff-Appellant,

v.

STATE OF CALIFORNIA; COUNTY OF  
ORANGE; PROVIDENCE ST. JOSEPH  
HEALTH; MISSION HOSPITAL  
REGIONAL MEDICAL CENTER; BRIAN  
CHOI, M.D.; TONY CHOW, M.D.;  
AFSHIN DOUST, Physician; MAHDIEH  
FALLAHTAFTI, Doctor; LAWRENCE  
TUCKER, M.D.; TARA YUAN, Physician,

Defendants-Appellees.

No. 22-55408

D.C. No. 5:19-cv-02492-CBM-SP

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Consuelo B. Marshall, District Judge, Presiding

Submitted February 14, 2023\*\*

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

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\* 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).

Melissa Calabrese, by and through her guardian ad litem Dorothy Calabrese, appeals pro se from the district court's order precluding Dorothy from proceeding pro se with the action on Melissa's behalf, and denying the appointment of counsel. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The district court did not err in denying Dorothy's motion to proceed pro se with the action on Melissa's behalf because a guardian who is not an attorney or represented by an attorney may not bring an action on behalf of a plaintiff who is incompetent. *See Johns v. County of San Diego*, 114 F.3d 874, 876-77 (9th Cir. 1997).

The district court did not abuse its discretion in denying Dorothy's motion for appointment of counsel because Dorothy failed to demonstrate exceptional circumstances. *See Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014) (setting forth standard of review and "exceptional circumstances" requirement for appointment of counsel).

Dorothy's motions for appointment of counsel (Docket Entry Nos. 2 and 10) are denied.

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We treat Dorothy's response to defendants' notice of intent to unseal (Docket Entry No. 9) as a motion to maintain the seal and grant the motion. The Clerk will maintain the second amended complaint and the exhibits attached to the second amended complaint under seal.

**AFFIRMED.**