

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 5 2023

FOR THE NINTH CIRCUIT

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

CALEB AVERY T'BEAR,

Plaintiff-counter-
defendant-Appellant,

v.

BARRY FORMAN,

Defendant-counter-claimant-
Appellee.

No. 21-16807

D.C. No. 3:17-cv-00796-JSC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jacqueline Scott Corley, Magistrate Judge, Presiding**

Submitted June 26, 2023***

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Caleb Avery t'Bear appeals pro se from the district court's order denying his motion for post-judgment relief in this diversity action concerning t'Bear's default

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

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

on promissory notes. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Garamendi v. Henin*, 683 F.3d 1069, 1077 (9th Cir. 2012) (Fed. R. Civ. P. 60(a)); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993) (Fed. R. Civ. P. 60(b)); *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017) (Fed. R. Civ. P. 60(d)(3)). We affirm.

The district court did not abuse its discretion in denying t’Bear’s post-judgment motion because t’Bear failed to demonstrate any basis for relief. *See United States v. Estate of Stonehill*, 660 F.3d 415, 443-45 (9th Cir. 2011) (a party must establish fraud on the court by clear and convincing evidence); *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006) (Rule 60(b)(6) relief may be granted “only where extraordinary circumstances” are present (citations and quotation marks omitted)); *Blanton v. Anzalone*, 813 F.2d 1574, 1577 (9th Cir. 1987) (“A judge may invoke Rule 60(a) in order to make a judgment reflect the actual intentions of the court, plus the necessary implications.”); *see also Pettibone v. Cupp*, 666 F.2d 333, 335 (9th Cir. 1981) (Fed. R. App. P. 4(a)(5) expressly requires filing of separate motion for extension of time to file a notice of appeal).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

t'Bear's request that the Circuit Executive recuse herself is denied.

AFFIRMED.