NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TANYA SPURBECK, Plaintiff-Appellant, v. WYNDHAM WORLDWIDE CORPORATION; WYNDHAM VACATION OWNERSHIP, INC., Defendants-Appellees, and WYNDHAM DESTINATIONS; WYNDHAM VACATION OWNERSHIP; WYNDHAM WORLDWIDE, Defendants.	No. 23-15565 D.C. No. 2:20-cv-00346-RFB-NJK MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware II, District Judge, Presiding

Submitted July 16, 2024**

Before: SCHROEDER, VANDYKE, and KOH, Circuit Judges.

* 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).

Tanya Spurbeck appeals pro se from the district court's summary judgment in her employment action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1155 (9th Cir. 2010). We affirm.

The district court properly granted summary judgment on Spurbeck's claims under Title VII and the Americans with Disabilities Act ("ADA") because Spurbeck failed to file her action within ninety days of receiving a right-to-sue letter and failed to establish extraordinary circumstances that would justify equitable tolling. *See Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1121 (9th Cir. 2007) (Title VII requires a claimant to file a civil lawsuit within 90 days of receiving a right to sue notice from the EEOC); *see also* 42 U.S.C. § 12117 (incorporating Title VII procedures into the ADA); *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1010 (9th Cir. 2011) (setting forth the test for equitable tolling on the basis of mental impairment); *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (explaining that equitable tolling is warranted "when extraordinary circumstances beyond the plaintiff's control made it impossible to file a claim on time").

The district court properly granted summary judgment on Spurbeck's intentional infliction of emotional distress claims because Spurbeck failed to raise a genuine dispute of material fact as to whether defendants had acted with intent or

reckless disregard to cause emotional distress. *See Dillard Dep't Stores, Inc. v. Beckwith*, 989 P.2d 882, 886 (Nev. 1999) (setting forth the elements of a claim for intentional infliction of emotional distress).

The district court properly granted summary judgment on Spurbeck's negligence claim because Spurbeck failed to raise a genuine dispute of material fact as to whether defendants breached any duty of care owed to Spurbeck. *See Turner v. Mandalay Sports Ent., LLC*, 180 P.3d 1172, 1175 (Nev. 2008) (setting forth the elements of a negligence claim).

The district court did not abuse its discretion in denying Spurbeck's motion for reconsideration because Spurbeck failed to set forth any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or. V. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration).

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

Spurbeck's motion to amend the caption (Docket Entry No. 4) is denied.

AFFIRMED.