

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 16 2009

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

PATTY LOVAAS,

Plaintiff - Appellant,

v.

UNITED STATES FOREST SERVICE,

Defendant - Appellee.

No. 08-35987

D.C. No. 2:07-cv-00071-RKS

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Keith Strong, Magistrate Judge, Presiding

Argued and Submitted November 2, 2009
Portland, Oregon

Before: FISHER and PAEZ, Circuit Judges, and MOSKOWITZ, District Judge.**

Lovaas appeals from the district court's order dismissing her amended complaint for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We review the order de novo, *see Nuclear Info. & Res. Service*

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

v. United States Dept. of Transp., 457 F.3d 956, 958 (9th Cir. 2006), and we affirm.

The district court lacked subject matter jurisdiction to hear Lovaas' abuse of process claim because she did not allege the misuse of legal process, which requires the involvement of a court. *See Hughes v. Lynch*, 164 P.3d 913, 919 (Mont. 2008); *see also Prosser and Keeton on the Law of Torts* § 121, at 898 (5th ed. 1984) (“[I]t is clear that the judicial process must in some manner be involved.”); Restatement (Second) of Torts § 682.

Lovaas abandoned her other claims at oral argument.

AFFIRMED.