

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 17 2017

FOR THE NINTH CIRCUIT

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

WENDALL KABUTAN; WANDA
NALANI KABUTAN,

Plaintiffs-Appellants,

v.

PIONEER HI-BRED INTERNATIONAL, a
DuPont Business and Iowa Corporation; et
al.,

Defendants-Appellees.

No. 16-16838

D.C. Nos. 1:12-cv-00231-LEK-
BMK, 1:12-cv-00655-LEK-BMK

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Wendall and Wanda Kabutan appeal pro se from the district court's order denying their Federal Rule of Civil Procedure 60(b) motion for relief from judgment in this consolidated diversity action. We have jurisdiction under 28

* 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).

U.S.C. § 1291. We review for an abuse of discretion, *Harvest v. Castro*, 531 F.3d 737, 741 (9th Cir. 2008), and we affirm.

The district court did not abuse its discretion by denying the Kabutans' Rule 60(b) motion because the Kabutans failed to demonstrate any grounds for relief. *See id.* at 745-49 (setting forth grounds for reconsideration under Rule 60(b)).

In their opening brief, the Kabutans fail to challenge the district court's dismissal of the action for failure to prosecute, and therefore they waived any such challenge. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant's opening brief.”).

The Kabutans' request that certain exhibits filed in the district court be unsealed, set forth in the opening brief, is denied.

AFFIRMED.