

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2022

FOR THE NINTH CIRCUIT

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

JAMES NALDER, Guardian Ad Litem on
behalf of Cheyanne Nalder; GARY LEWIS,
individually,

Plaintiffs-Appellants,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Defendant-Appellee.

No. 21-16283

D.C. No.

2:09-cv-01348-RCJ-GWF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Argued and Submitted November 18, 2022
San Francisco, California

Before: LINN,** RAWLINSON, and HURWITZ, Circuit Judges.

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

** The Honorable Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

Plaintiffs James Nalder, guardian ad litem for Cheyanne Nalder, and Gary Lewis appeal the district court's denial of a motion for relief from a judgment pursuant to Federal Rule of Civil Procedure 60 in this action against United Automobile Insurance Company ("UAIC") arising out of the insurer's failure to defend Lewis in a personal injury suit brought by Nalder. The district court judgment from which relief was sought was in favor of Nalder and Lewis but limited consequential damages to the limits of Lewis's insurance policy, rejecting plaintiffs' contention that the appropriate measure of damages was the award in a state-court default judgment entered in 2008 against Lewis. *Nalder v. United Auto. Ins. Co.*, No. 2:09-cv-1348-RCJ-GWF, 2013 WL 5882472 (D. Nev. Oct. 30, 2013). On appeal, after receiving answers to two certified questions from the Nevada Supreme Court, *Nalder v. United Auto. Ins. Co.*, 449 P.3d 1268 (Nev. 2019) (table), we held that the expired default judgment could not provide a basis for consequential damages, *Nalder v. United Auto. Ins. Co.*, 817 F. App'x 347, 349 (9th Cir. 2020).

Plaintiffs' Rule 60 motion nonetheless claimed that an award of consequential damages in excess of the policy limits could be premised on the expired default judgment. Our prior decision squarely rejected that argument, and we see no warrant for revisiting it. *See United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007) ("Under the [law of the case] doctrine, a court is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the

identical case.” (quoting *Herrington v. Cnty. of Sonoma*, 12 F.3d 901, 904 (9th Cir. 1993))).

Plaintiffs’ attempts to reassert various other arguments previously rejected by this Court fare no better. *See Nalder*, 817 F. App’x at 349 (holding that the tolling argument was “waived” and that the later state-court judgments were “irrelevant . . . because such other judgments were not the basis for [Plaintiffs’] complaint against UAIC in this case”). Because we have already decided all the issues raised in this appeal, we affirm the district court’s denial of Rule 60 relief.

AFFIRMED.¹

¹ Both Requests for Judicial Notice (Dkt. 30, 44) are granted. Appellants’ Motion to Strike (Dkt. 45) is denied.