

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

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

RICHARD RYNN, next friend and parent of
MR, a minor person; next friend of M.R.,

No. 21-16454

Plaintiff-Appellant,

D.C. No. 2:18-cv-00414-JJT

v.

MEMORANDUM*

GREGORY A. McKAY, in his official
capacity as Director of Arizona Department
of Child Safety and personally; et al.,

Defendants-Appellees,

and

RENEE MILLER; et al.,

Defendants.

Appeal from the United States District Court
for the District of Arizona
John Joseph Tuchi, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, 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). Rynn's requests for oral
argument, set forth in his filings, are denied.

Richard Rynn appeals pro se from the district court's orders denying his post-judgment motions in his 42 U.S.C. § 1983 action alleging federal and state law claims arising out of defendants' removal of his minor daughter from his custody. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166 (9th Cir. 2017) (denial of motion to vacate); *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001) (denial of motion to amend). We affirm.

The district court did not abuse its discretion in denying Rynn's motion to vacate the judgment under Federal Rule of Civil Procedure 60(d)(3) because Rynn failed to establish a fraud on the court. *See Sierra Pac. Indus.*, 862 F.3d at 1168 (discussing when relief is available under Rule 60(d)(3) and explaining that a party must identify misrepresentations that "affect the outcome of the case" (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in denying Rynn's motion to amend under Rule 59(e) because Rynn failed to establish that the district court judge should have recused himself or any other basis for relief. *See Zimmerman*, 255 F.3d at 740 (discussing when relief is available under Rule 59(e) and explaining that a party may not "repeat[] legal arguments made earlier" or "introduce facts that were available earlier in the proceedings"); *see also* 28 U.S.C. § 455(b)(5) (explaining when recusal is required based on circumstances involving

a judge's spouse).

To the extent Rynn challenges the underlying judgment dismissing his action, we do not consider his contentions because they are outside the scope of this appeal.

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).

Rynn's motions to correct his briefs (Docket Entry Nos. 28, 43, and 44) are granted. All other requests are denied.

AFFIRMED.