

DEC 16 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS MCKINNON and GERI
MCKINNON,

Plaintiffs - Appellants,

v.

NDEX WEST, LLC; et al.,

Defendants - Appellees.

No. 12-17156

D.C. No. 2:12-cv-00329-JCM-
VCF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted December 9, 2015**

Before: WALLACE, RAWLINSON, and IKUTA, Circuit Judges.

Plaintiffs Thomas and Geri McKinnon appeal pro se from the district court's judgment dismissing their action alleging conspiracy and fraud claims relating to the attempted foreclosure of their home. We have jurisdiction under 28 U.S.C.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo a district court's dismissal based on claim preclusion. *See Cabrera v. City of Huntington Park*, 159 F.3d 374, 381 (9th Cir. 1998). We affirm.

The district court did not err by granting defendants' motion to dismiss without a hearing. *See* Fed. R. Civ. P. 78(b) ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."); D. Nev. L. R. 78-2 ("All motions may, in the Court's discretion, be considered and decided with or without a hearing."); *see also Novak v. United States*, 795 F.3d 1012, 1023 (9th Cir. 2015) (due process does not require a court to hold a hearing on a party's motion to dismiss).

The McKinnons have waived their arguments as to the substance of the district court's dismissal order by raising them for the first time in their reply brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[A]rguments not raised by a party in its opening brief are deemed waived.").

AFFIRMED.