

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 3 2016

FOR THE NINTH CIRCUIT

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

KENNETH BARKER,

Plaintiff-Appellant,

v.

TONY J. AGBAYANI, Jr., California  
Superior Court Judge,

Defendant-Appellee.

No. 16-15583

D.C. No. 2:16-cv-00304-MCE-  
CKD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted October 25, 2016\*\*

Before: LEAVY, GRABER, and CHRISTEN, Circuit Judges.

Kenneth Barker appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising from his divorce proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Bianchi v. Rylaarsdam*,

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\* 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).

334 F.3d 895, 898 (9th Cir. 2003). We may affirm on any basis supported by the record. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). We affirm.

Dismissal of Barker’s action was proper because Judge Agbayani, Jr. was entitled to judicial immunity. *See Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam) (holding that judges retain their immunity from suit when they are accused of acting maliciously or corruptly); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (“Judges and those performing judge-like functions are absolutely immune from damage liability for acts performed in their official capacities.”).

Barker’s contentions that the district court violated his constitutional rights are unpersuasive.

Barker’s motion for calendar preference, filed on August 8, 2016, is denied as unnecessary.

**AFFIRMED.**