

NOT FOR PUBLICATION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,

No. 22-15148

Plaintiff-Appellant,

D.C. No. 2:21-cv-01755-DWL

v.

MEMORANDUM*

FIRST TRANSIT, INC., an Ohio corporation; UNKNOWN PARTIES, named as ABC Corporation I-X; and Black and White Partnerships, and/or Sole Proprietorships I-X,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Dominic Lanza, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Richard Rynn appeals pro se from the district court's judgment dismissing

* 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 the opening brief, reply brief, and various motions filed by Rynn, are denied.

his diversity action alleging claims arising out of a complaint made against him by a coworker. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6) on the basis of res judicata. *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). We may affirm on any basis supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

We affirm the district court’s dismissal of Rynn’s action because Rynn failed to allege facts sufficient to state any plausible claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation and internal quotation marks omitted)); *Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 758 P.2d 1313, 1318-19 (Ariz. 1988) (setting forth elements of a malicious prosecution claim under Arizona law); *KB Home Tucson, Inc. v. Charter Oaks Fire Ins. Co.*, 340 P.3d 405, 412 (Ariz. Ct. App. 2014) (setting forth elements of a fraud claim under Arizona law); *Crackel v. Allstate Ins. Co.*, 92 P.3d 882, 889 (Ariz. Ct. App. 2004) (setting forth elements of an abuse of process claim under Arizona law).¹

The district court did not abuse its discretion in denying Rynn’s motions for

¹ Because we affirm for failure to state a claim, we do not consider the district court’s application of res judicata.

leave to amend his complaint because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (describing factors relevant to the determination of whether an act is judicial in nature and subject to absolute judicial immunity)

The district court did not abuse its discretion in declining to grant Rynn post-judgment relief because Rynn failed to establish any basis for relief. *See United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1166-68 (9th Cir. 2017) (setting forth standard of review and discussing when relief is available under Rule 60(d)(3)); *Sch. Dist. No. 1J Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and discussing when reconsideration is appropriate under Rule 59(e)).

We reject as unsupported by the record Rynn's contention that the district court judge was biased against him.

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).

First Transit's unopposed request for judicial notice (Docket Entry No. 16) is granted. Rynn's motion to file an oversized reply brief (Docket Entry No. 24) is

granted. The Clerk is directed to file Rynn's reply brief at Docket Entry No. 22.

All other pending motions are denied.

AFFIRMED.