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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRENCE BROWNLEE,

Plaintiff - Appellant,

v.

J. BURLESON; et al.,

Defendants - Appellees.

No. 07-16262

D.C. No. CV-04-01330-DFL/EFB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted January 7, 2008 **

Before: O'SCANNLAIN, SILVERMAN and GRABER, Circuit Judges.

On June 14, 2007, appellant Terrence Brownlee filed a motion in district court to set aside the court's September 29, 2006 judgment granting summary judgment in favor of appellees, which the district court denied on June 22, 2007.

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

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

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This appeal from the district court's June 22, 2007 order concerns only whether the district court abused its discretion by denying the motion to set aside the judgment and does not extend to the merits of the underlying grant of summary judgment. *See Molloy v. Wilson*, 878 F.2d 313, 315 (9th Cir. 1989). This court issued an order requiring appellant to show cause why the appeal should not be summarily affirmed.

A review of the record and appellant's response to the order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). We conclude the district court did not abuse its discretion denying the motion to set aside judgment, because appellant's contentions regarding appellees' statements of fact failed to show fraud, misrepresentation or misconduct, or any other reason justifying relief from judgment. *See Fed. R. Civ. P. 60(b)*. In addition, the district court properly exercised jurisdiction over the motion because appellate proceedings had concluded. *See Gould v. Mut. Life Ins. Co. of New York*, 790 F.2d 269, 772 (9th Cir. 1986). Accordingly, we summarily affirm the district court's judgment.

Appellant is reminded that in his closed appeal no. 06-16950, this court

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directed the Clerk not to file or entertain any motion that is not accompanied by proof of payment of the docketing and filing fees.

AFFIRMED.