

APR 28 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KANE PATTERSON,

Plaintiff - Appellant,

v.

DR. SCOTT; et al.,

Defendants - Appellees.

No. 07-17320

D.C. No. CV-06-00974-PMP/LRL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Nevada prisoner Kane Patterson appeals pro se from the district court's order denying his motion to reconsider following the judgment dismissing his 42

* 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).

U.S.C. § 1983 action for failure to comply with a court order to pay an initial partial filing fee. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we vacate and remand.

Patterson moved for reconsideration and submitted proof to explain his apparent failure to comply with the district court's prior order. Because the district court summarily denied the motion, and relief appears to be warranted under either Rule 59(e) or 60(b) of the Federal Rules of Civil Procedure, we vacate the order denying the motion to reconsider and remand for further proceedings. *See Sch. Dist. No. 1J*, 5 F.3d at 1263 (explaining requirements for Rules 59(e) and 60(b)); *see also Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000) (holding that district court abused its discretion in denying Rule 60(b)(1) motion without conducting equitable analysis).

VACATED and REMANDED.