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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY LOWRY; MARIAN CAROL,

Plaintiffs - Appellants,

v.

YAVAPAI COUNTY BOARD OF
SUPERVISORS; et al.,

Defendants - Appellees.

No. 08-17408

D.C. No. 3:08-cv-08025-NVW

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Neil V. Wake, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Gary Lowry and Marian Carol appeal pro se from the district court's judgment in their action alleging violations of their religious freedom rights under

* 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).

federal and state law. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a grant of summary judgment. *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1029 (9th Cir. 2004). We may affirm on any ground supported by the record, *id.* at 1030, and we affirm.

Summary judgment was properly granted on plaintiffs' claims under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") and Arizona law because the undisputed evidence establishes there was no substantial burden on their exercise of religion. *See id.* at 1035-36 (concluding there was no substantial burden on the exercise of religion under RLUIPA where party could file application for zoning permit); *State v. Hardesty*, 214 P.3d 1004, 1007 (Ariz. 2009) (explaining that, to establish a violation of Arizona's Free Exercise of Religion Act, a party must establish, *inter alia*, that a governmental act substantially burdens the exercise of religion).

Summary judgment was properly granted on plaintiffs' First Amendment claims because the challenged zoning laws are neutral and generally applicable. *See San Jose Christian Coll.*, 360 F.3d at 1030-32 (granting summary judgment where the zoning law was neutral and generally applicable).

Plaintiffs' equal protection claims fail because plaintiffs have failed to identify others who were treated differently under the ordinances. *See Christian*

Gospel Church, Inc. v. City & County of San Francisco, 896 F.2d 1221, 1226 (9th Cir. 1990) (“[Any] equal protection argument requires the existence of at least two classifications of persons which are treated differently under the law.” (internal quotation marks and citation omitted)).

Plaintiffs’ remaining contentions lack merit.

Because we affirm summary judgment on the merits, we do not address the district court’s imposition of terminating sanctions as an alternative basis for dismissal.

We lack jurisdiction to review the district court’s order denying plaintiffs’ motion for rehearing because plaintiffs did not file a notice of appeal from that order. *See TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1354 (9th Cir. 1990).

AFFIRMED.