

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY G. HEWITT,
Appellant,

vs.

JAMES BACA; BRUCE BANNISTER;
SHEILA BARTH; MARY CARTER;
ROBERT CRUM; WILLIAM
DONNELLY, M.D.; KAREN GEDNEY,
M.D.; VICTORIA HITE; JORDAN JIM;
KATHY KING; NICHOLAS
LAZZARINO; DAVID MARR, M.D.;
JOHN PEERY; HOWARD SKOLNIK;
GREGORY SMITH; SANDRA SNIDER;
STEVEN TURNER; AND SHELL
ZAPPETTINI,
Respondents.

No. 58189

FILED

DEC 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a civil rights action.¹ First Judicial District Court, Carson City; James Todd Russell, Judge. As directed, respondents have filed a response. Appellant has filed a reply.

Appellant filed a complaint in the district court alleging that respondents exhibited a deliberate indifference to his serious medical needs in violation of the Eighth Amendment of the United States Constitution.² Specifically, appellant identified five occasions on which he

¹We direct the clerk of this court to amend the caption in this matter to conform to the caption in this order.

²Appellant's complaint also included a claim for retaliation. Because appellant has failed to make any arguments challenging the summary
continued on next page...

allegedly was denied appropriate medical treatment for high blood pressure and issues related to a pre-existing kidney condition. He also asserted that his kidney condition deteriorated when respondents failed to maintain an adequate supply of his blood pressure medicine, resulting in an 11-day interruption in his treatment, and that he was refused sunglasses to address his light sensitivity, causing him to suffer migraines.³

On consideration of the parties' arguments and the record on appeal, we conclude that respondents were entitled to judgment as a matter of law on appellant's claims of deliberate indifference to his serious medical needs because appellant failed to identify a genuine issue of material fact as to whether respondents had subjective knowledge that he had serious medical needs, which respondents deliberately decided not to treat. See Estelle v. Gamble, 429 U.S. 97, 104-06 (1976) (explaining that an inmate's claim for inadequate medical care only constitutes cruel and

...continued

judgment as to that cause of action in his civil proper person appeal statement, we do not address it here. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that it is a party's responsibility to "cogently argue, and present relevant authority, in support of his appellate concerns").


³Appellant also claimed that he was denied access to a flat prison yard, which he argued he needed because his kidney condition caused him pain when he climbed inclines. As appellant has since been moved to a prison where there is a flat prison yard, however, and he has not alleged that he sustained specific damages from the failure to transfer him sooner, this claim is moot. See Personhood Nevada v. Bristol, 126 Nev. ___, ___, 245 P.3d 572, 574 (2010) (stating that "even though a case may present a live controversy at its beginning, subsequent events may render the case moot").

unusual punishment under the Eighth Amendment when a state actor is willfully and deliberately indifferent to a serious medical need and explaining that proof of negligent treatment or medical malpractice alone is not sufficient to establish that a medical provider had knowledge of an inmate's medical needs and intentionally chose not to address those needs). Assuming that appellant's blood pressure and kidney complaints constituted serious medical needs, the record demonstrates that appellant was treated for such complaints on a number of occasions, including the five specific occasions when he asserts he was denied appropriate medical treatment. In each instance, appellant was examined and offered treatment, with one exception when he left the medical unit before the examination was completed and before treatment could be offered. Moreover, although the prison temporarily ran out of his blood pressure medicine on one occasion, appellant presented no evidence that the lapse was intentional, and the record shows that he was provided with an alternate blood pressure medicine when he reported suffering symptoms from the interruption in treatment. As the record demonstrates that appellant was treated for these conditions, he did not establish an Eighth Amendment violation in this regard.⁴ See Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (explaining that an inmate's disagreement with a diagnosis or treatment plan is insufficient to support a claim for deliberate indifference to serious medical needs).

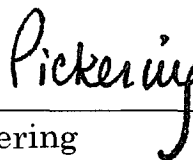
⁴While the record appears to support appellant's contention in his appeal statement that a different nurse attended to him on a date on which respondent Kathy King attested that she treated appellant, this does not change our analysis with regard to appellant's deliberate indifference claims, and thus, does not warrant reversal.

As to the light sensitivity, although appellant's medical record noted that he had reported experiencing sensitivity to light, there was no evidence that appellant had actually been diagnosed with such a condition. Thus, assuming that light sensitivity is a serious medical need, appellant failed to demonstrate the existence of a question of fact as to whether he actually suffered from light sensitivity that medically required him to wear sunglasses, and he also did not demonstrate an Eighth Amendment violation on this basis. As appellant failed to raise any genuine issues of material fact regarding whether he suffered from serious medical needs that respondents were aware of and deliberately failed to treat properly, the district court correctly granted summary judgment to respondents on all of appellant's claims. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that after a de novo review, this court will affirm a summary judgment if the record, viewed in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law). Accordingly, we

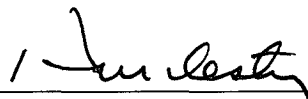
ORDER the judgment of the district court AFFIRMED.⁵

 , J.

Saitta

 , J.

Pickering

 , J.

Hardesty

⁵We deny appellant's October 25, 2012, motion for a court order requiring the district court to send him copies of his medical records filed in this action. See NDOC AR 639.02(8) (prohibiting inmates from possessing medical records in their cells).

cc: Hon. James Todd Russell, District Judge
Tony G. Hewitt
Attorney General/Carson City
Carson City Clerk