

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Grzeslo v. Phillips

Grzeslo · No. 1:24-cv-0615 JLT SAB (PC) · Decided February 26, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JAMES GRZESLO, Case No. 1:24-cv-0615 JLT SAB (PC) 12 Plaintiff,
ORDER ADOPTING FINDINGS AND RECOMMENDATION, DISMISSING THE 13 v.
ACTION FOR FAILURE TO STATE A COGNIZABLE CLAIM, AND DIRECTING 14 BRYAN
D. PHILLIPS, et al., THE CLERK OF COURT TO CLOSE THIS CASE 15 Defendants. (Doc.

13) 16 17 James Grzeslo seeks to hold Dr. Idalberto Zaldivar-Galves liable for deliberate 18
indifference to Plaintiff’s serious medical needs while housed at the Substance Abuse Treatment
19 Facility and State Prison. (Doc. 11.)

The assigned magistrate judge screened Plaintiff’s second 20 amended complaint pursuant to 28
U.S.C. § 1915A(a). (Doc. 13.) 21 The magistrate judge found: “despite previous advisement and
amendment, Plaintiff 22 continues to present unsupported conclusory assertions of denial of
medical treatment and/or 23 assistance.” (Doc. 13 at 4.)

The magistrate judge observed, “The allegations merely suggest that 24 Plaintiff disagrees with
the medication and treatment being provided or not provided,” and such 25 disagreements “do not
rise to the level of a constitutional violation.” (Id.)

To the extent Plaintiff 26 also sought to hold Dr. Zaldivar-Galves liable for unauthorized practice
of medicine, the 27 magistrate judge found such a claim was not viable because “under California
law, there is no 28 private right of action for the unauthorized practice of law.” (Id. at 4.)

Therefore, the magistrate 1 judge found Plaintiff failed to state a cognizable claim and
recommended the Court dismiss the 2 complaint. (Id. at 4-5.) In addition, the magistrate judge
found further leave to amend was futile, 3 because Plaintiff was previously given “specific
instructions from the Court” and failed to 4 provide additional information about his claims.

(Id. at 6.) 5 Plaintiff filed objections to the Findings and Recommendations (Doc. 14), followed by
a 6 “finalization” of his objections “on November 12, 2024 (Doc. 17). Plaintiff contends the 7
magistrate judge committed judicial misconduct by posting the Findings and Recommendations 8
on the Internet—including Google and Lexis—prior to Plaintiff receiving the document through 9
the prison’s legal mail system.

(Doc. 14 at 2, 5, 16.) In addition, Plaintiff asserts that he “is more 10 than highly qualified to ... question Defendant” and his medical treatment, because Plaintiff “is 11 nearing his 50th anniversary in the medical-health care profession in the field of forensic 12 pathology and science.” (Id. at 3, 4.) Plaintiff also recounts his medical history, including: a 13 dental procedure that caused a gran mal seizure, stroke, Bell’s Palsy, and partial paralysis; 14 cervical radiculopathy; history of seizures for which he does not receive prescription medication; 15 hearing loss since 1983; Parkinson diagnosis that Plaintiff attributes to Agent Orange exposure 16 and toxic water at Camp Lejeune; edema in his right lower extremity; swollen right testicle; and 17 age-related glaucoma and cataracts.

(Id. at 6-8.) According to Plaintiff, the magistrate judge 18 erred by finding the allegations at most amount to negligence. (Id. at 9.) In support of his 19 assertion that Defendant was deliberately indifferent, Plaintiff refers to several other actions 20 against Defendant filed in this Court and the treatment of another prisoner who is now deceased. 21 (Id. at 11-15; Doc.

17 at 2.) 22 As an initial matter, Plaintiff’s assertion of misconduct by the magistrate judge and Court 23 is based upon a misconception related to the Court’s electronic filing and service process. 24 Neither the magistrate judge nor the Court posted the Findings and Recommendations on the 25 identified websites.

The Court merely electronically files its documents and does not control the 26 actions of third parties—such as Google and LexisNexis—who may access the public dockets, 27 retrieve documents, and post the rulings. Consequently, Plaintiff’s allegations of misconduct are 28 plainly unfounded. 1 Plaintiff’s objections do not meaningfully respond to the magistrate judge’s finding that 2 he fails to state a cognizable claim for deliberate indifference by Defendant.

Although Plaintiff 3 recites a significant medical history and numerous diagnoses, the magistrate judge did not find 4 that Plaintiff lacked a serious medical need. Rather, the magistrate judge found Plaintiff failed to 5 allege facts sufficient to support a conclusion that Defendant exhibited deliberate indifference to 6 the identified medical needs.

To the extent Plaintiff contends that he is qualified to question the 7 treatment (as well as recommendations to other doctors or lack of treatment) by Defendant 8 because of his experience in the health care profession, even differences of opinion between 9 medical professionals generally do not amount to deliberate indifference. See *Toguchi v. Chung*, 10 391 F.3d 1051, 1057 (9th Cir.

2004). An argument that more should have been done to diagnose 11 or treat a condition generally reflects such a difference of opinion and does not establish 12 deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97, 107 (1977). 13 The cases cited by Plaintiff do not support a conclusion that he alleged sufficient facts to 14 support a claim against Defendant.

The Court's determination of whether a plaintiff stated a cognizable claim at the screening stage is constrained to the allegations of the complaint. See *16 Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (explaining that a determination of whether a plaintiff states a claim under Section 1915A applies the standards of Rule 12(b)(6) of the Federal Rules of Civil Procedure); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Toward this end, the cases referenced are immaterial to the Court's analysis concerning the alleged deliberate indifference towards Plaintiff and the objections on these grounds are unavailing. Plaintiff does not identify any facts in his second amended complaint to support a claim for deliberate indifference.

Finally, the Court notes Plaintiff does not dispute—nor otherwise address— the finding of the magistrate judge that he does not have a private right of action for his claim under California law related to the alleged unauthorized practice of medicine. (See generally Docs. 14, 17.) According to 28 U.S.C. § 636(b)(1), the Court performed a de novo review of this case.

Having carefully reviewed the matter, including Plaintiff's objections, the Court concludes the Findings and Recommendations are supported by the record and by proper analysis. Based upon the foregoing, the Court ORDERS: 1.

The Findings and Recommendations dated September 27, 2024 (Doc. 23) are ADOPTED in full. 2. Plaintiff's second amended complaint is DISMISSED without leave to amend, for failure to state a claim. 3. The Clerk of Court is directed to close this case. IT IS SO ORDERED. | Dated: February 26, 2025 Cerin | Tower TED STATES DISTRICT JUDGE