

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Althof v. Hanlin

575 F. App'x 789 (9th Cir. 2014) · Decided December 17, 2013

SUMMARY

The Ninth Circuit affirmed summary judgment for jail officers on an inmate’s claims arising from the denial of outdoor exercise. The court held that the officers were entitled to qualified immunity because the asserted Eighth Amendment right was not clearly established, and that the inmate had not shown the intent required for an intentional infliction of emotional distress claim.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Clifton
JURISDICTION	Federal
DECIDED	December 17, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	The district court granted summary judgment for the defendants on all claims. Althof appealed the disposition of his 42 U.S.C. § 1983 claim based on the Eighth Amendment and his intentional infliction of emotional distress claim.
STANDARD OF REVIEW	De novo review of the district court's summary-judgment rulings.
PRECEDENTIAL VALUE	Nonprecedential unpublished disposition
PARTIES	Tag Althof v. John Hanlin, Mike Root, Tim O’Kelly, Mason Goodknight, Douglas County Jail

TOPICS

- qualified immunity
- section 1983
- prisoners rights
- standard of review
- appellate procedure

PRACTICE AREAS

- constitutional law
- civil rights
- prisoner litigation
- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants were entitled to qualified immunity on Althof's § 1983 claim alleging that deprivation of outdoor exercise violated the Eighth Amendment.
2. Whether summary judgment was proper on Althof's intentional infliction of emotional distress claim because he lacked evidence of the defendants' intent to cause severe emotional distress.

HOLDINGS

1. The defendants were entitled to qualified immunity because Althof's asserted constitutional right to outdoor exercise under the circumstances was not clearly established at the time of the alleged violation.
2. Summary judgment was proper on the intentional infliction of emotional distress claim because Althof presented no evidence that the defendants intended to cause him severe emotional distress.

KEY QUOTATIONS

"It is not clearly established that an inmate is entitled to outdoor exercise when he has proven to be violent, and the deprivation of outdoor exercise is in response to the plaintiff's violence." (575 F. App'x at 790)

"This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3." (575 F. App'x at 790)

FACTUAL BACKGROUND

During Althof's incarceration at the Douglas County Jail, jail officers deprived him of outdoor exercise. The deprivation was allegedly imposed in response to Althof's violent conduct. Althof asserted an Eighth Amendment claim under 42 U.S.C. § 1983 and an Oregon intentional infliction of emotional distress claim, but he presented no evidence that the defendants intended to cause him severe emotional distress.

PROCEDURAL HISTORY

Althof sued officers of the Douglas County Jail, alleging that they deprived him of outdoor exercise during his incarceration. The district court granted summary judgment on all claims. The Ninth Circuit reviewed the challenged rulings de novo and affirmed.

DISPOSITION

affirmed

CASES CITED

- Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551 F.3d 1132, 1137 (9th Cir. 2009)
- Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)
- LeMaire v. Maass, 12 F.3d 1444, 1457-58 (9th Cir. 1993)
- McGanty v. Staudenraus, 321 Or. 532, 901 P.2d 841, 849 (1995)
- Kohler v. Inter-Tel Techs., 244 F.3d 1167, 1182 (9th Cir. 2001)

OPINION

PER CURIAM.

MEMORANDUM ** Tag Althof sued Douglas County Jail (“the Jail”) officers John Hanlin, Mike Root, Tim O’Kelly, and Mason Goodknight (collectively “the Defendants”), alleging the Defendants had deprived Althof of outdoor exercise during Althofs incarceration at the Jail.

The district court granted summary judgment on all of Althofs claims. Althof appeals the disposition of (1) the § 1983 claim based on the Eighth Amendment, and (2) the intentional infliction of emotional distress (“IIED”) claim.¹ Reviewing de novo, *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1137 (9th Cir.2009), we affirm.

The district court properly granted summary judgment on the § 1983 claim. The Defendants are entitled to qualified immunity on Althofs § 1983 claim, because the asserted constitutional right was not clearly established at the time of the alleged violation.² See *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). It is not clearly established that an inmate is entitled to outdoor exercise when he has proven to be violent, and *790the deprivation of outdoor exercise is in response to the plaintiffs violence.³ On the contrary, this court has held that even a deprivation of outdoor exercise “for most of a five-year period of incarceration” did not violate the Eighth Amendment, when the deprivation was “directly linked to [the prisoner’s] own misconduct, which raised serious and legitimate security concerns within the prison.” *LeMaire v. Maass*, 12 F.3d 1444, 1457-58 (9th Cir.1993).

The district court also did not err in granting summary judgment on Althofs IIED claim, because Althof did not present any evidence of the Defendants’ intent to cause him severe emotional distress. See *McGanty v. Staudenraus*, 321 Or. 532, 901 P.2d 841, 849 (1995). AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir.

R. 36-3.. Althof waived any appeal of his negligence claim by not presenting any argument or legal authority on it. See *Kohler v. Inter-Tel Techs.*, 244 F.3d 1167, 1182 (9th Cir.2001).. Because we affirm on this independent ground, we need not address Hanlin’s potential liability in a supervisory role..

We so conclude, even considering the events that occurred prior to July 8, 2008, the contested statute of limitations cut-off date.