

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

Gray v. Khoo, et al.

Gray · No. 1:20-cv-01047-KES-SAB (PC) · Decided September 30, 2025

OPINION

Khoo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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11 DANA GRAY, No. 1:20-cv-01047-KES-SAB (PC)

12 Plaintiff, ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

13 v. Doc. 159 14 A. KHOO, et al., 15 Defendants. 16 17 Plaintiff Dana Gray is proceeding pro se
and in forma pauperis in this civil rights action 18 filed pursuant to 42 U.S.C. § 1983. This matter
was referred to a United States magistrate judge 19 pursuant to 28 U.S.C. § 636(b)(1)(B) and
Local Rule 302. 20 On July 11, 2022, plaintiff moved for summary judgment, Doc. 105, and on
October 11, 21 2022, defendants opposed plaintiff's motion and filed a motion for summary
judgment as to 22 plaintiff's claims, Docs. 125, 126. On June 23, 2023, the assigned magistrate
judge issued 23 findings and recommendations, recommending that plaintiff's motion for
summary judgment be 24 denied and defendants' motion for summary judgment be granted. Doc.
159.1 Specifically, the 25 magistrate judge found that plaintiff had failed to establish a genuine
issue of material fact and 26 1 On November 10, 2022, plaintiff filed miscellaneous motions
regarding her prior motion for 27 summary judgment and defendants' motion for summary
judgment. Docs. 136–140. In addition to addressing the parties' motions for summary judgment,
the June 23, 2023 findings and 28 recommendations also considered and recommended denying
plaintiff's miscellaneous motions. 1 that as a matter of law plaintiff had failed to establish that
defendants were deliberately indifferent 2 to her serious medical needs or that defendants were
medically negligent in their decisions 3 regarding plaintiff's medical care. See generally *id.* The
parties were afforded twenty-one (21) 4 days within which to file any objections. *Id.* at 38. On
July 18, 2023, plaintiff filed objections,
5 Doc. 162, and on July 27, 2023, defendants replied. Doc. 164.2
6 Plaintiff argues that the SMART committee's decision to deny her surgery was made on
7 October 3, 2019, rather than October 1, 2019, as contended by defendants. Doc. 162 at 2.

8 Plaintiff also argues that the subsequent approval of her surgery in 2023 demonstrates that 9 defendants were deliberately indifferent in their denial of her surgery in 2019. Id. at 4–5. 10 Plaintiff’s objections are unpersuasive. 11 Plaintiff argues that this minor discrepancy as to the date the SMART committee 12 convened and denied plaintiff’s surgery creates a dispute of fact sufficient to defeat defendants’ 13 motion for summary judgment. Id. at 2. To the contrary, facts in dispute must be material to 14 defeat summary judgment. Fed. R. Civ. P. 56(c). A fact is material if it “might affect the 15 outcome of the suit. . .” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is the 16 reasonableness of the SMART committee’s determination that is material, rather than the precise 17 date the committee convened. And the uncontradicted evidence shows that the SMART 18 committee reasonably concluded that plaintiff faced substantial risks in undergoing the fusion 19 revision surgery, and that those risks outweighed the potential benefits. See Doc. 159 at 33. As 20 to plaintiff’s subsequent approval for surgery in 2023, a later determination by another doctor, 21 based on plaintiff’s condition at the latter time, does not establish a conflict with a prior medical 22 evaluation that was based on plaintiff’s condition at the earlier time. And even if plaintiff had 23 shown a difference in medical opinion existed as to plaintiff’s condition at the relevant time, a 24 mere difference in medical opinion does not establish that the prior medical provider was 25 deliberately indifferent to the plaintiff’s serious medical needs. See *Sanchez v. Vild*, 891 F.2d 26 240, 242 (9th Cir. 1989) (“A difference of opinion does not amount to a deliberate indifference to 27 2 In August 2023, plaintiff filed several sur-replies and moved the Court to consider them. See

28 Docs. 165–167. The Court has also considered plaintiff’s sur-replies and attached exhibits.

1 | [plaintiffs] serious medical needs.”). 2 In accordance with the provisions of 28 U.S.C. § 636(b) (1), the Court conducted a de 3 | novo review of this case. Having carefully reviewed the file, including plaintiff’s objections, 4 | defendants’ reply, and plaintiffs sur-replies, the Court concludes that the findings and 5 || recommendations are supported by the record and proper analysis. 6 Accordingly: 7 1. The findings and recommendations issued on June 23, 2023, Doc. 159, are 8 ADOPTED in full; 9 2. Plaintiffs miscellaneous motions filed on November 10, 2022, Docs. 136, 137, 138, 10 139, 140, are DENIED; 11 3. Plaintiff’s motion for summary judgment, Doc. 105, is DENIED; 12 4. Defendants’ motion for summary judgment, Doc. 125, is GRANTED; and 13 5. The Clerk of Court shall enter judgment in favor of Defendants, terminate all 14 pending motions, and CLOSE this case. 15 16

17 | TIS SO ORDERED. _

18 Dated: _ September 29, 2025 4h

19 UNITED STATES DISTRICT JUDGE

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