

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Cano v. Schriro

269 F. App'x 755 (9th Cir. 2008) · Decided March 12, 2008

SUMMARY

The Ninth Circuit affirmed summary judgment for prison officials in Erineo Cano’s 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs related to Hepatitis C. The court also upheld denials of Cano’s requests for a continuance, leave to amend, appointed counsel, and an appointed expert, and declined to consider an issue raised for the first time on appeal.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
JURISDICTION	Federal
DECIDED	March 12, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se appeal from the district court's summary judgment against a prisoner in a 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs.
STANDARD OF REVIEW	Summary judgment was reviewed de novo. The denials of a continuance, leave to amend, appointment of counsel, and appointment of an expert were reviewed for abuse of discretion. Issues not raised in the district court were generally not considered on appeal.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Erineo Cano v. Schriro

TOPICS

- section 1983
- prisoners rights
- cruel and unusual punishment
- summary judgment
- appellate procedure

PRACTICE AREAS

- civil rights
- prisoner litigation
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper on Cano's Eighth Amendment deliberate-indifference claim concerning treatment for Hepatitis C.

2. Whether the district court improperly denied Cano's request for a continuance to conduct additional discovery.
3. Whether the district court improperly denied Cano's untimely motion to amend the complaint.
4. Whether the district court improperly denied Cano's motions for appointment of counsel and an expert.
5. Whether the Ninth Circuit should review Cano's challenge to prior strikes under 28 U.S.C. § 1915 when the issue was raised for the first time on appeal.

HOLDINGS

1. Summary judgment was proper because Cano's conclusory allegations of inadequate medical treatment did not controvert evidence that his condition was appropriately monitored and that additional testing and treatment were administered as warranted; he therefore failed to raise a triable issue regarding deliberate indifference.
2. The district court did not abuse its discretion in denying Cano's request for a continuance because he failed to show that additional discovery would reveal specific facts precluding summary judgment.
3. The district court did not abuse its discretion in denying Cano's untimely request to amend because he failed to demonstrate good cause.
4. The district court properly denied Cano's motion for appointment of counsel because he failed to demonstrate exceptional circumstances.
5. The district court properly denied Cano's motion for appointment of an expert under Federal Rule of Evidence 706 because the action did not involve technical evidence or complex issues.
6. The court declined to consider Cano's challenge to the validity of prior strikes because he raised the issue for the first time on appeal and did not establish an applicable exception.

KEY QUOTATIONS

“The district court properly granted summary judgment on Cano’s Eighth Amendment claim because Cano’s conclusory allegations of inadequate medical treatment were insufficient to controvert defendants’ evidence that Cano’s condition was monitored appropriately and additional tests and treatment had been administered as warranted.” (756)

“The district court did not abuse its discretion by denying Cano’s request for a continuance under Federal Rule of Civil Procedure 56(f) because Cano failed to show that “additional discovery would have revealed specific facts precluding summary judgment.”” (756)

FACTUAL BACKGROUND

Cano, a prisoner, alleged that prison officials were deliberately indifferent to his serious medical needs because they failed to provide adequate treatment for Hepatitis C. The defendants presented evidence that Cano's condition was appropriately monitored and that additional testing and treatment were provided as warranted. Cano relied on conclusory allegations and did not identify specific facts establishing deliberate indifference or showing that further discovery would defeat summary judgment.

PROCEDURAL HISTORY

The district court granted summary judgment to the prison officials on Cano's Eighth Amendment medical-care claim. It also denied Cano's requests for a continuance for additional discovery, leave to amend, appointment of counsel, and appointment of an expert. The Ninth Circuit had jurisdiction under 28 U.S.C. § 1291 and affirmed.

DISPOSITION

affirmed

CASES CITED

- Morrison v. Hall, 261 F.3d 896, 900 (9th Cir. 2001)
- Arpin v. Santa Clara Valley Transportation Agency, 261 F.3d 912, 922 (9th Cir. 2001)
- Farmer v. Brennan, 511 U.S. 825, 834-35 (1994)
- Tatum v. City and County of San Francisco, 441 F.3d 1090, 1101 (9th Cir. 2006)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)
- Coleman v. Quaker Oats Co., 232 F.3d 1271, 1295 (9th Cir. 2000)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Walker v. American Home Shield Long Term Disability Plan, 180 F.3d 1065, 1071 (9th Cir. 1999)
- Allen v. Ornoski, 435 F.3d 946, 960 (9th Cir. 2006), cert. denied, 546 U.S. 1136 (2006)

OPINION

PER CURIAM.

MEMORANDUM ** Erineo Cano appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging prison officials were deliberately indifferent to his serious medical needs by failing to provide him with adequate treatment for Hepatitis C. We have jurisdiction under 28 U.S.C. *756§ 1291.

We review de novo, Morrison v. Hall, 261 F.3d 896, 900 (9th Cir.2001), and we affirm. The district court properly granted summary judgment on Cano's Eighth Amendment claim because Cano's conclusory allegations of inadequate medical treatment were insufficient to controvert defendants' evidence that Cano's condition was monitored appropriately and additional tests and treatment had been administered as warranted.

See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 922 (9th Cir.2001) (holding conclusory allegations unsupported by factual data are insufficient to defeat motion for summary judgment). Cano failed to raise a triable issue of fact as to whether any of the defendants were deliberately indifferent to his medical needs. See Farmer v. Brennan, 511 U.S. 825, 834-35, 114 S.Ct.

1970, 128 L.Ed.2d 811 (1994) (holding Eighth Amendment claim requires prison official to have a sufficiently culpable state of mind). The district court did not abuse its discretion by denying Cano's request for a continuance under Federal Rule of Civil Procedure 56(f) because Cano failed to show that "additional discovery would have revealed specific facts precluding summary judgment." *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1101 (9th Cir.2006).

The district court did not abuse its discretion by denying Cano's untimely request to amend his complaint because Cano did not demonstrate good cause. See Fed.R.Civ.P. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992) (holding Rule 16 "good cause" standard controls after scheduling order establishes pleading timetable); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir.2000) (reviewing for abuse of discretion).

The district court properly denied Cano's motion for appointment of counsel because Cano did not demonstrate exceptional circumstances. See *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991). The district court properly denied Cano's motion for the appointment of an expert under Federal Rule of Evidence 706 because Cano's action did not involve technical evidence or complex issues.

See *Walker v. Am. Home Shield Long Term, Disability Plan*, 180 F.3d 1065, 1071 (9th Cir.1999) (reviewing appointment of an expert under abuse of discretion standard). We do not consider Cano's contentions regarding the validity of prior strikes against him under 28 U.S.C. § 1915 because he raises this issue for the first time on appeal. See *Allen v. Ornoski*, 435 F.3d 946, 960 (9th Cir.2006), cert. denied, 546 U.S. 1136, 126 S.Ct.

1140, 163 L.Ed.2d 944 (2006) (explaining that the court will not review issues not raised in district court except in special circumstances such as to prevent manifest injustice). Cano's remaining contentions are unpersuasive. **AFFIRMED**. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.