

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SEP 4 2001

PATRICK FISHER
Clerk

ANTHONY STILLS,

Plaintiff-Appellant,

v.

JEFF SERNA, Classification Bureau
Chief; DONNA M. MARTINEZ,
Deputy Classification Bureau Chief,

Defendants-Appellees.

No. 00-2256
(D.C. No. CIV-99-894 JC/KBM)
(D. N.M.)

ORDER AND JUDGMENT *

Before **HENRY** , **PORFILIO** , and **MURPHY** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff-appellant Anthony Stills appeals from summary judgment granted in favor of defendants-appellees Jeff Serna and Donna Martinez on his action for monetary damages brought pursuant to 42 U.S.C. § 1983. Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm.

Defendants are the Bureau Chief and Deputy Bureau Chief, respectively, of the Classifications Department of the State of New Mexico Department of Corrections, and are responsible for the transfer of inmates among various correctional facilities. Mr. Stills alleges that defendants are responsible for injuries he suffered in an assault by fellow inmates in February 1998 in the Torrance County Detention Facility (TCDF) in Estancia, New Mexico. He asserts that defendants negligently transferred him to the facility in disregard of his warning that he might not be safe there because he had been assaulted at other prisons. The magistrate judge assigned to the case considered Mr. Stills' pleadings and attached grievances, as well as documents submitted by defendants in a *Martinez*¹ report. In a well-reasoned and carefully documented order, the magistrate judge recommended granting summary judgment in favor of defendants. The magistrate judge found that Mr. Stills failed to submit any

¹ See *Martinez v. Aaron*, 570 F.2d 317, 319-20 (10th Cir. 1978) (approving order requiring prison officials to investigate facts surrounding inmate's civil rights suit in order to construct an administrative record from which the court may decide jurisdictional and other issues).

evidence or testimony showing that defendants knew and deliberately ignored that Mr. Stills faced a substantial risk of serious harm if he were transferred to TCDF. The district court adopted the magistrate judge's recommendations and granted judgment in favor of defendants.

We review the grant of summary judgment de novo. *McBride v. Deer*, 240 F.3d 1287, 1289 (10th Cir. 2001). On appeal, Mr. Stills makes the same arguments he made before the district court and briefs many issues that are irrelevant to the disposition of the case. We find no merit in Mr. Stills' claim that the district court improperly concluded that his allegations were false; clearly, the court accepted Mr. Stills' factual assertions as true for summary judgment purposes. As the magistrate judge noted, however, Mr. Stills' "warning" that he might face danger if transferred "gave officials no indication of any specific known danger at the [TCDF] facility." R. Doc. 43 at 4. We have considered the parties' arguments, the record, and the applicable law, and for substantially the same reasons stated in the magistrate judge's order of May 31, 2000, we AFFIRM the district court's grant of summary judgment.

Entered for the Court

Michael R. Murphy
Circuit Judge