

UNITED STATES COURT OF APPEALS

Filed 5/30/96

FOR THE TENTH CIRCUIT

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WILLIAM H. WARREN, JR.,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 96-6028
)	(D.C. No. CIV-95-1220-R)
DENNIS COTNER, MARY BLACKWOOD,)	(W. Dist. of Okla.)
BYRON JOHNSON, DR., D.O., and)	
STEVE HARGETT,)	
)	
Defendants-Appellees.)	

ORDER AND JUDGMENT*

Before **ANDERSON, BARRETT, and MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); Tenth Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

William H. Warren, Jr. (Warren), an Oklahoma state prisoner, appearing pro se, appeals from the district court's Memorandum

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Tenth Cir. R. 36.3.

Opinion and Order adopting the Findings and Recommendation of the United States Magistrate Judge in granting summary judgment in favor of the Defendants-Appellees and in dismissing Warren's action.

Warren filed this action pursuant to 42 U.S.C. § 1983 alleging denial of serious medical needs in violation of the Eighth and Fourteenth Amendments, predicated on his alleged need to wear nylon bikini-cut feminine style panties because of his stool maintenance condition. Dr. Byron Johnson, one of the defendants, submitted reports that Warren was in need of special underwear because of medical problems with stool maintenance and that Warren should be provided with "White cotton, thick, and absorbent" underwear. Warren's complaint insisted, however, that he must be allowed to receive and wear "Women's Nylon Panties" for medical reasons. He seeks injunctive and declaratory relief.

The magistrate judge found that the defendants did not deliberately interfere with clearly prescribed underwear to which Warren is entitled. In his objection to the magistrate judge's findings, Warren argued that there are genuine issues of material facts unresolved in that the defendants' denial of his request to receive the nylon panties causes him to "walk around in his community smelling of feces and sometimes having feces shown on his jeans." (R., Vol. I, Tab 18, p. 4).

On appeal, Warren contends that there exist material factual

disputes which cannot be resolved by summary judgment as to whether, as he claims, the defendants have subjected him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution in that the defendants-appellees are deliberately indifferent to his serious medical needs.

We affirm for substantially the reasons set forth in the "Findings and Recommendation of United States Magistrate Judge" dated and entered November 24, 1995.

AFFIRMED.

Entered for the Court:

James E. Barrett,
Senior United States
Circuit Judge