

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 16, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

MARK WALTER PAULSEN,

Plaintiff - Appellant,

v.

GARETT GEBHART, BVCF TC
Manager/Acting BVCF HSA; CHRIS
TEIPEL, BVCF TC Counselor; DOUG
ROBERTS, BVCF Health Services
Administrator,

Defendants - Appellees.

No. 18-1398
(D.C. No. 1:16-CV-00129-PAB-KMT)
(D. Colo.)

ORDER AND JUDGMENT*

Before **LUCERO, HARTZ, and McHUGH**, Circuit Judges.

Plaintiff Mark Walter Paulsen appeals the entry of summary judgment against him by the United States District Court for the District of Colorado on his Eighth Amendment deliberate-indifference claims. Exercising jurisdiction under 28 U.S.C. § 1291, we

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

affirm, as Plaintiff has presented insufficient evidence that Defendants acted with deliberate indifference.

Plaintiff is a prisoner proceeding pro se. At the time relevant to his claim, he was incarcerated at the Buena Vista Correctional Facility in Colorado (Buena Vista). When he was medically evaluated before his assignment to a correctional facility, he was diagnosed with hepatitis C. To receive treatment for the disease, a prisoner must first complete a drug-and-alcohol treatment program. On August 6, 2014, Plaintiff began one such program—the Therapeutic Community Program (TC Program) at Buena Vista. Defendant Chris Teipel was his counselor. Defendant Garrett Gebhart was the manager of the program and the acting Health Services Administrator, the position responsible for administering the medical department at Buena Vista. Plaintiff completed the TC Program on July 22, 2015—just under a year after he started the program—but was not then provided hepatitis treatment. Defendant Doug Roberts became Health Services Administrator in August 2015 and supervised Mr. Gebhart.

Plaintiff filed his complaint in January 2016. All but two of his claims were dismissed by the court; some dismissals were sua sponte, some were on motions by the defendants. The remaining claims were (1) that Defendants Teipel, Gebhart, and Roberts were deliberately indifferent to his medical needs, in violation of the Eighth Amendment; and (2) that Defendant Teipel retaliated against him in violation of the First Amendment. These claims were brought under 42 U.S.C. § 1983. Defendants moved for summary judgment, and the district court granted the motion.

Plaintiff filed a notice of appeal challenging only “the decision/verdict concerning Defendant(s) Gebhart, Teipel and Roberts, for the Plaintiff’s ‘1983’ Deliberate Indifference Claim.” R. at 364. We therefore limit our review to that issue. *See* Fed. R. App. P. 3(c)(1)(B) (notice of appeal “must . . . designate the judgment, order, or part thereof being appealed”); *Footte v. Spiegel*, 118 F.3d 1416, 1422 (10th Cir. 1997) (“We have no jurisdiction to review [an issue] because it was not identified in the notice of appeal.”); *Turner v. Falk*, 632 F. App’x 457, 459 (10th Cir. 2015) (applying this proposition to a pro se petitioner).¹

We review de novo the district court’s grant of summary judgment. *See Garrison v. Gambro, Inc.*, 428 F.3d 933, 935 (10th Cir. 2005). A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

The Supreme Court has recognized that “[a] prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). To prove such a claim, a plaintiff must establish both (1) an objective component—that the “harm suffered rises to a level sufficiently serious to be cognizable under the Cruel and Unusual Punishment Clause of the Eighth Amendment”; and (2) a subjective component—that “the defendants knew he faced a substantial risk of harm and disregarded that risk, by failing to take

¹ Accordingly, we do not address the motion-to-dismiss decisions, which are barely mentioned in Plaintiff’s brief anyway. Nor do we address the district court’s grant of summary judgment on his retaliation claim.

reasonable measures to abate it.” *Martinez v. Beggs*, 563 F.3d 1082, 1088–89 (10th Cir. 2009) (internal quotation marks omitted).

Plaintiff argues that Defendant Teipel acted with deliberate indifference in delaying Plaintiff’s graduation from the TC Program. He claims that ordinarily the program ran for nine months, but that he was made to participate for a year. But Plaintiff signed a form acknowledging that the program was 12 months long. Moreover, even if Plaintiff had been required to participate in the program for a longer duration than others, he cannot show that any prolongation was the result of indifference to his condition. Rather, the record reflects that Plaintiff frequently missed program activities and failed to timely complete assignments. Plaintiff has not raised an issue of material fact that Defendant Teipel acted with deliberate indifference.

Plaintiff claims that Defendant Gebhart acted with deliberate indifference in failing to notify the Colorado Department of Corrections of his completion of the TC Program so that he could begin receiving treatment. But it was Plaintiff, not Gebhart, who was responsible for submitting proof that he had completed the program. Plaintiff acknowledged as much in his complaint. He has therefore failed to raise an issue of material fact on Gebhart’s alleged deliberate indifference.

Plaintiff also argues that Gebhart told Defendant Roberts that he had completed the program, but Roberts nevertheless failed to ensure that he received treatment. But Plaintiff does not contest Roberts’s sworn statement that he had “only a working understanding” of hepatitis C as a virus and did not understand that a delay in treatment posed a serious health risk to Plaintiff. R. at 308. Plaintiff therefore has not raised a

question whether Roberts “kn[ew] of and disregard[ed] an excessive risk to inmate health or safety,” as is required to prevail on a deliberate-indifference claim. *Farmer*, 511 U.S. at 837; *see Verdecia v. Adams*, 327 F.3d 1171, 1177 (10th Cir. 2003) (“Deliberate indifference requires more than a finding of negligence.”).

CONCLUSION

We **AFFIRM** the district court’s entry of summary judgment for Defendants. We **GRANT** Plaintiff’s motion to proceed *in forma pauperis*.

Entered for the Court

Harris L Hartz
Circuit Judge