

May 30, 2008

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

DAVID KAY WIENS,

Plaintiff - Appellant,

v.

M.D. DOCTOR ZEAVIN; MRS.
PETRASH, Physician's Assistant;
MRS. GRISMER, Health Services
Administrator; JOHN DOE, Federal
and State Officers,

Defendants - Appellees.

No. 08-6027

(W.D. Oklahoma)

(D.C. No. 5:06-cv-01286-F)

ORDER AND JUDGMENT*

Before **BRISCOE**, **MURPHY**, and **HARTZ**, Circuit Judges.

David Kay Wiens filed in the United States District Court for the Western District of Oklahoma a civil-rights complaint alleging a violation of the Eighth Amendment by federal prison staff who were deliberately indifferent to his medical needs. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of*

*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 This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Narcotics, 403 U.S. 388 (1971) (permitting claims against federal officers who violate a plaintiff's constitutional rights). In a thorough Report and Recommendation (R&R) the magistrate judge assigned to the case recommended denial of the claims. The district court adopted the recommendation and dismissed the complaint.

On appeal Mr. Wiens, appearing pro se, challenges the district court's (1) dismissal of his civil-rights complaint, (2) denial of his motion to compel discovery and present evidence, and (3) denial of his motions for the appointment of counsel. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

For the reasons stated in the R&R, we affirm the dismissal of the Eighth Amendment claims. As for Mr. Wiens's contention that he was denied discovery and the ability to present evidence, he has not identified any evidence of a disputed material fact that he hopes to obtain through discovery or any disputed material facts that he can prove with his evidence. Because he cannot show prejudice, he is not entitled to relief. *See Davoll v. Webb*, 194 F.3d 1116, 1139 (10th Cir. 1999) (denial of discovery will not be disturbed absent a showing that the court's decision resulted in "actual and substantial prejudice" to the complaining litigant). Finally, the district court's denial of counsel was not an abuse of discretion. The court reasonably determined that Mr. Wiens's claims did not present complex issues and that he had demonstrated his ability to present the claims. *See Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (district

court did not abuse its discretion in denying appointment of counsel in civil case when plaintiff was able to present his claims without the assistance of counsel).

We AFFIRM the judgment of the district court. We DENY Mr. Wiens's motions to present evidence and his motion for a subpoena.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge