

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

May 24, 2016

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ERIC BROWN,

Plaintiff - Appellant,

v.

IDAHO CORRECTIONAL CENTER;
WARDEN TIMOTHY WENGLER;
ASSISTANT WARDEN TOM
KESSLER; H.S.A. ACEL K.
THACKER, CCHP; DR. KIRK
STANDER; DR. DAVID AGLER;
KIT CARSON CORRECTIONAL
CENTER; WARDEN VANCE
EVERETT; ASSISTANT WARDEN
GREG WILKINSON; DR. SUSAN
TIONA; H.S.A. JODI GRAY;
CORRECTIONS CORPORATION OF
AMERICA,

Defendants - Appellees.

No. 15-1355
(D.C. No. 1:13-CV-01342-REB-KMT)
(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY, and MORITZ**, Circuit Judges.**

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

Plaintiff-Appellant Eric Brown, an inmate appearing pro se, appeals from the district court's grant of summary judgment in favor of various remaining Defendants¹ on his amended complaint. See I R. 181-97 (first amended complaint). The district court overruled Mr. Brown's objections to the recommendation of the magistrate judge and entered final judgment. Brown v. Idaho Corr. Ctr., No. 13-cv-01342-REB-KMT, 2015 WL 5210656 (D. Colo. Sept. 8, 2015).

The parties are familiar with the facts which were summarized by the magistrate judge. Brown v. Idaho Corr. Ctr., No. 13-cv-01342-REB-KMT, 2015 WL 5251511, at *1-3 (D. Colo. July 27, 2014). On appeal, Mr. Brown, an Idaho prisoner housed in a Colorado private prison,² argues that the Defendants have violated his Fifth, Eighth, and Fourteenth Amendment rights and the ADA by (1) not allowing him reasonable accommodations for his migraine headaches, (2) depriving him of his life through the destruction of his kidneys, (3) causing him undue suffering and exposure to risk that could easily be remedied, and (4) not allowing him to rely upon the ADA. Although Mr. Brown also seeks to rely upon

¹ The district court dismissed various Idaho State Defendants upon recommendation of the assigned magistrate judge and ordered that the caption be amended. Brown v. Idaho Dep't of Corrs., No. 13-cv-01342-REB-KMT, 2014 WL 4695958, at *1 (D. Colo. Sept. 19, 2014).

² Mr. Brown advises that he has been moved back to Idaho.

“equivalent sections” of the Colorado and Idaho Constitutions on appeal, these provisions were not raised below and may not be raised here. Schrock v. Wyeth, Inc., 727 F.3d 1273, 1284 (10th Cir. 2013)

We review the district court’s grant of summary judgment de novo, applying the same standard as the district court and magistrate judge. McBride v. Peak Wellness Ctr., Inc., 688 F.3d 698, 703 (10th Cir. 2012). Summary judgment is warranted if “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). We affirm the judgment for substantially the reasons relied upon the magistrate judge in her recommendation. Brown, 2015 WL 5251511, at*5–10.

AFFIRMED. We DENY Mr. Brown’s request for IFP status, DENY all pending motions or requests, and remind him that he remains obligated to pay the full amount of the filing fee.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge