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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES DAVID SMITH,  
  
Plaintiff - Appellant,  
  
v.  
  
BRYAN MCGARVIE; et al.,  
  
Defendants - Appellees.

No. 07-35528

D.C. No. CV-05-05156-RJB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted March 18, 2009\*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

James David Smith, a Washington state prisoner, appeals pro se from the district court's summary judgment in favor of defendants in his 42 U.S.C. § 1983

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action alleging various claims, including deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Smith’s deliberate indifference claim because Smith failed to raise a genuine issue of material fact as to whether defendants knew of and disregarded a substantial risk of serious harm to him. *See id.* at 1057 (deliberate indifference standard); *id.* at 1058 (explaining that a difference of medical opinion concerning treatment does not amount to deliberate indifference).

The district court properly granted summary judgment on Smith’s other claims because Smith failed to exhaust administrative remedies. *See Booth v. Churner*, 532 U.S. 731, 734, 738-41 (2001) (requiring exhaustion of administrative remedies where some relief is available in administrative proceedings, even if the prisoner seeks different relief).

The district court did not abuse its discretion by allowing the parties to file additional motions for summary judgment after the applicable law changed. *See Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002) (“The district court has considerable latitude in managing the parties’ motion practice[.]”); *see also*

*Knox v. Sw. Airlines*, 124 F.3d 1103, 1105-06 (9th Cir. 1997) (rejecting contention that successive motions for summary judgment were impermissible).

Smith's motion for leave to file amended and supplemental pleadings is denied.

Smith's remaining contentions are unpersuasive.

**AFFIRMED.**