

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUL 01 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GERALD JOHANNES,

Plaintiff - Appellant,

v.

JIM HERNANDEZ; STEPHANIE  
FRENCH,

Defendants - Appellees.

No. 07-56271

D.C. No. CV-04-00028-TJH

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN and N.R. SMITH, Circuit Judges.

Gerald Johannes, who was civilly committed, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action against two officials at Atascadero State Hospital. We have jurisdiction under 28 U.S.C. § 1291. We

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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).

review de novo, *Or. Natural Res. Council v. Allen*, 476 F.3d 1031, 1036 (9th Cir. 2007), and we vacate and remand.

The district court's order stated summarily that Defendants' motion for summary judgment was granted, but gave no indication as to which of the various grounds it relied upon. For instance, it is not clear if the district court concluded that Defendant Hernandez's conduct was "reasonable" under the Fourth Amendment, in light of Hernandez being reprimanded after the incident. It is also not clear if the district court applied the "atypical and significant hardship" standard of *Sandin v. Conner*, 515 U.S. 472 (1995), in this context of civil confinement. Finally, both parties rely on *Hydrick v. Hunter*, 500 F.3d 978 (9th Cir. 2007), which has since been vacated by the Supreme Court. *See Hunter v. Hydrick*, No. 07-958, 2009 WL 1443637, at \*1 (May 26, 2009). For all these reasons, we vacate the district court's order and remand for further consideration.

The parties shall bear their own costs on appeal.

**VACATED and REMANDED.**