

JAN 12 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM P. GARCIA,

Plaintiff - Appellant,

v.

V. KATUKOTA, M.D.; et al.,

Defendants - Appellees.

No. 08-16672

D.C. No. 1:03-CV-06658-LJO-SMS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O’Neill, District Judge, Presiding

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

William P. Garcia, a California state prisoner, appeals pro se from the district court’s summary judgment for defendants and the order denying his motion for a preliminary injunction in his 42 U.S.C. § 1983 action alleging deliberate

---

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

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

indifference to his serious medical needs. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo an order granting summary judgment, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and for abuse of discretion and proper application of legal principles an order denying a preliminary injunction, *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1298 (9th Cir. 2003). We affirm.

The district court properly granted summary judgment to defendants because evidence of medical misdiagnosis and of a difference of medical opinion are insufficient to show deliberate indifference. *See McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992) (explaining that negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights), *rev'd on other grounds, WMX Tech., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); *Sanchez v. Vild*, 891 F.2d 240, 241-42 (9th Cir. 1989) (holding that a difference of opinion regarding the best course of medical treatment does not amount to deliberate indifference).

Because “the district court employed the proper preliminary injunction standard and correctly apprehended the underlying legal issues in the case,” it did not abuse its discretion in denying Garcia’s motion for preliminary injunction. *Earth Island Inst.*, 351 F.3d at 1298.

Garcia's remaining contentions are unpersuasive. His motion for sanctions is denied.

**AFFIRMED.**