

JUL 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSH THOMAS,

Plaintiff - Appellant,

v.

D. A. CARRASCO; et al.,

Defendants - Appellees.

No. 10-17480

D.C. No. 1:04-cv-05793-MJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Michael J. Seng, Magistrate Judge, Presiding\*\*

Submitted July 17, 2012\*\*\*

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

California state prisoner Josh Thomas appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants violated

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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 parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

his constitutional rights when they accessed his medical records. We have jurisdiction under 28 U.S.C. § 1291. We review de novo and may affirm on any ground supported by the record. *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001). We affirm.

Dismissal of the action was proper because Thomas failed to state a claim upon which relief may be granted. *See Seaton v. Mayberg*, 610 F.3d 530, 538 (9th Cir. 2010) (explaining that a proper governmental interest may overcome a conditional right to medical privacy); *Cato v. United States*, 70 F.3d 1103, 1106-07 (9th Cir. 1995) (dismissal without leave to amend is not an abuse of discretion where amendment would be futile).

Thomas's remaining contentions, including those concerning alleged judicial misconduct and his claims under the Fourth and Fifth Amendments, are unpersuasive.

**AFFIRMED.**