

JUL 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALAN R. DOHNER,

Plaintiff - Appellant,

v.

ROBERT DEPWEG; et al.,

Defendants - Appellees,

and

ROXANA BUDEANU; et al.,

Defendants,

ANGELICA BUDEANU, Non-Party in
Pro Se,

Movant.

No. 09-57010

D.C. No. 2:03-cv-01682-TJH-
MAN

MEMORANDUM*

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

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

Submitted July 17, 2012**

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

Alan R. Dohner, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging constitutional violations in connection with a criminal investigation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *S.E.C. v. Nite*, 207 F.3d 1134, 1135 (9th Cir. 2000) (per curiam). We vacate and remand.

Before summary judgment is granted in a pro se prisoner's action, the pro se prisoner must be provided with fair notice of the requirements of the summary judgment rule. *See Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998) (en banc); *see also* Fed. R. Civ. P. 56(e). It is undisputed that Dohner, who was a prisoner proceeding pro se at the time that summary judgment was filed, was not provided with the notice required by *Rand*.

Contrary to appellees' contention, the error was not harmless because Dohner had not received *Rand* notice in prior recent litigation, and the record does not disclose that he had a complete understanding of the requirements of Rule 56. *See Rand*, 154 F.3d at 961-62 (explaining that "harmless error review is

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

inappropriate in most cases” and refusing to engage in “subjective scrutiny of the prisoner’s pleadings”).

Therefore, we vacate the district court’s judgment and remand for further proceedings.

Dohner’s pending motion to for leave to file a supplemental brief, filed on February 29, 2012, is denied as moot.

VACATED and REMANDED.