

AUG 21 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRUCE PATRICK HANEY,

Plaintiff - Appellant,

v.

A. L. NELSON; R. SALDANA, AKA R.
Saldano,

Defendants - Appellees.

No. 11-16563

D.C. No. 1:04-cv-05935-AWI-
SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief District Judge, Presiding

Argued and Submitted May 10, 2012
Pasadena, California

Before: PREGERSON, GRABER, and BERZON, Circuit Judges.

Bruce Patrick Haney, a *pro se* prisoner litigant, appeals the district court's order granting a Motion for Summary Judgment brought by correctional officers A.L. Nelson and R. Saldana. On appeal, Haney contends that the district court

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

abused its discretion by granting summary judgment in favor of the correctional officers before allowing Haney to complete discovery. We agree.

The district court's refusal to permit further discovery is reviewed for an abuse of discretion. *Landmark Dev. Corp. v. Chambers Corp.*, 752 F.2d 369, 373 (9th Cir.1985) (per curiam). “[S]ummary judgment is disfavored where relevant evidence remains to be discovered, particularly in cases involving confined *pro se* plaintiffs.” *Jones v. Blanas*, 393 F.3d 918, 930 (9th Cir. 2004). A timely pending motion to compel further discovery should have alerted the trial court of the need to first address Haney's discovery motion before taking up the prison guards' summary judgment motion. *Garrett v. City of San Francisco*, 818 F.2d 1515, 1518 (9th Cir. 1987).

Here, the court granted the prison guards' summary judgment motion before the prison guards complied with Haney's discovery requests and before they answered Haney's interrogatories. The magistrate judge had earlier issued an order compelling Nelson and Saldana to in good faith respond to Haney's interrogatories (as modified by the district court) and to come forth with the records Haney requested. In response to Nelson's and Saldana's Motion for Reconsideration of the order compelling further discovery, the magistrate judge stayed enforcement of the discovery order until the parties could fully brief the prison guards' Motion for

Reconsideration. Significantly, the magistrate judge never ruled on Nelson's and Saldana's Motion for Reconsideration before they successfully moved for summary judgment.

The record shows that Haney sought discovery diligently. The district court abused its discretion in granting Appellees' Motion for Summary Judgment before allowing Haney to complete discovery.

The district court's order granting summary judgment in favor of correctional officers Nelson and Saldana is **AFFIRMED** with respect to its finding that Haney's request for injunctive relief is now moot, and **VACATED** in all other respects. The matter is **REMANDED** with instructions to allow Haney to complete discovery. The parties shall each bear their own costs on appeal.