

SEP 25 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAREY DWAYNE DORSEY,

Plaintiff - Appellant,

v.

CATHOLIC HEALTH CARE WEST
MERCY HOSPITAL AND MEDICAL
CENTER,

Defendant - Appellee.

No. 11-55059

D.C. No. 3:10-cv-02264-JAH-
CAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Carey Dwayne Dorsey appeals pro se from the district court's judgment dismissing his action alleging violations of the Americans with Disabilities Act

* 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).

(“ADA”) and the Rehabilitation Act. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Dorsey’s action without prejudice because Dorsey failed to allege facts sufficient to establish a prima facie case of disability discrimination, including that he was disabled within the meaning of the ADA or the Rehabilitation Act. *See Walton v. U.S. Marshals Serv.*, 492 F.3d 998, 1003 n.1, 1005 (9th Cir. 2007) (noting that same analysis applies under the ADA and the Rehabilitation Act and discussing requirements for prima facie case and the meaning of disabled under those statutes).

We do not consider Dorsey’s Title VII claim because Dorsey raises it for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.