

JAN 02 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SPENCER PIERCE,

Plaintiff - Appellant,

v.

RICHARD LONG; BRUCE
BANNISTER; JOSEPH BRACKBILL;
HOWARD SKOLNIK; E. K.
MCDANIEL,

Defendants - Appellees.

No. 10-16692

D.C. No. 3:07-cv-00202-RCJ-
RAM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, Chief District Judge, Presiding

Argued & Submitted December 7, 2012
San Francisco, California

Before: TROTT and RAWLINSON, Circuit Judges, and BLOCK, Senior District
Judge.**

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

** The Honorable Frederic Block, Senior District Judge for the U.S.
District Court for the Eastern District of New York, sitting by designation.

Spencer Pierce appeals the district court's grant of summary judgment based on its holding that none of the defendants-appellees were deliberately indifferent to his medical needs. Because the parties are well acquainted with the facts and circumstances of this case, we repeat them only as necessary to illuminate this disposition. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Deliberate indifference requires an individual defendant to act in a manner akin to criminal recklessness. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Even grossly negligent conduct will not support a claim. Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1060 (9th Cir. 2004) (citing Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)). The record does not contain evidence sufficient to support Pierce's allegations that any of the defendants-appellees were deliberately indifferent to Pierce's medical needs.

With respect to Pierce's finger injury, Dr. Long's treatment does not appear to be negligent in any way, and no reasonable juror could believe that Dr. Long prevented Pierce from receiving treatment in light of Dr. Long's recommendations. Director Skolnik and Warden McDaniel were not subjectively aware of Pierce's serious medical needs. Farmer, 511 U.S. at 837. Dr. Bannister and Brackbill properly informed Pierce in connection with the terms of his grievance that he was not allowed to possess tape because of security concerns.

With respect to Pierce's pectoral injury, the record shows that Pierce disagreed with his course of treatment. However, "a difference of medical opinion . . . cannot support a claim of deliberate indifference." Toguchi, 391 F.3d at 1060.

Finally, because the district court considered the evidence Pierce raised in his objection to the magistrate's report and recommendations prior to entering summary judgment, the district court properly denied Pierce's motion for reconsideration.

AFFIRMED.