

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 27 2014

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

DONALD D'AMICO,

Plaintiff - Appellant,

v.

ROBERT B. BANNISTER; et al.,

Defendants - Appellees.

No. 13-15523

D.C. No. 3:11-cv-00860-RCJ-VPC

MEMORANDUM*

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

Submitted February 18, 2014**

Before: ALARCÓN, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Nevada state prisoner Donald D'Amico appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d, 1056 (9th Cir. 2004),

* 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).

and we affirm.

The district court properly granted summary judgment because D'Amico failed to establish a genuine dispute of material fact as to whether defendants acted with deliberate indifference by not providing him with physical therapy. *See id.* at 1057-58 (prison officials act with deliberate indifference only if they know of and disregard an excessive risk to inmate health; neither a prisoner's difference of opinion concerning the course of treatment nor mere negligence in diagnosing or treating a medical condition amounts to deliberate indifference).

Moreover, even though D'Amico submitted his opposition brief to defendants' motion for summary judgment after the magistrate judge issued its report and recommendation, the district court noted in its order that it had considered all relevant filings. Accordingly, we reject D'Amico's contention that the district court did not consider his opposition brief.

AFFIRMED.