

MAR 18 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARVIE B. CARROLL,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>K. DUTRA, Correctional Officer; SOTO, Lab Assistant Technician,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 13-15405

D.C. No. 1:10-cv-00623-LJO-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

Arvie B. Carroll, a California state prisoner, 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

* 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).

28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Carroll failed to raise a genuine dispute of material fact as to whether he had a serious medical need at the time of the incident. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (a serious medical need exists if a failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain).

The district court did not abuse its discretion in admitting defendants' expert's testimony. *See Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1191-92 (9th Cir. 2007) (setting forth standard of review and requirements for expert testimony under Fed. R. Evid. 702; noting that the district court's ruling is entitled to deference, even when the expert testimony determines the outcome of a case).

The district court did not abuse its discretion in excluding portions of his and his wife's declarations. *See Sea-Land Serv., Inc. v. Lozen Int'l, LLC*, 285 F.3d 808, 813 (9th Cir. 2002) (setting forth the standard of review and requiring a showing of prejudice for reversal of an evidentiary ruling).

The district court did not abuse its discretion in denying Carroll's request for appointment of an expert witness because the action did not involve complex

scientific evidence or complex issues. *See McKinney v. Anderson*, 924 F.2d 1500, 1511 (9th Cir. 1991), *overruled on other grounds by Helling v. McKinney*, 502 U.S. 903 (1991) (standard of review).

Carroll’s “Request to Use Complete Original Record on Appeal,” filed on March 18, 2013, is denied as unnecessary. Because Carroll is proceeding without counsel, the excerpts of record requirement is waived. *See* 9th Cir. R. 30-1.2.

The parties’ requests for judicial notice, set forth in their briefs, are granted.

AFFIRMED.