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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOEL M. HUGHES,

Plaintiff - Appellant,

v.

DENNIS G. CHENAIL; et al.,

Defendants - Appellees,

And

JAMES WARREN BAIRD, MD, ADC
Medical Program Manager; et al.,

Defendants.

No. 12-16522

D.C. No. 4:08-cv-00657-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, Chief District Judge, Presiding

Argued and Submitted March 14, 2014
San Francisco, California

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

Before: FISHER and BERZON, Circuit Judges, and QUIST, Senior District Judge.**

Former Arizona state prisoner Joel Hughes appeals the district court's grant of summary judgment in favor of Drs. Macabuhay and Hegmann in Hughes' action under 42 U.S.C. § 1983 alleging deliberate indifference in the treatment of his Hepatitis B and C. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the district court's grant of summary judgment de novo, *Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 859 (9th Cir. 2011), and we affirm.

Hughes failed to raise a genuine dispute of material fact as to whether Drs. Macabuhay and Hegmann knew of and disregarded an excessive risk to Hughes' health and safety. *See Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). At most, the evidence that Hughes presented demonstrates that the failure of Drs. Macabuhay and Hegmann to immediately refer Hughes to a liver specialist amounted to negligence. However, "[m]ere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights." *Id.* (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992)) (internal quotation marks omitted). Accordingly, the district court properly granted summary judgment.

AFFIRMED.

** The Honorable Gordon J. Quist, Senior District Judge for the U.S. District Court for the Western District of Michigan, sitting by designation.