

JUN 18 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM D. SMITH,

Plaintiff - Appellant,

v.

ELIZABETH SUITER; et al.,

Defendants - Appellees.

No. 13-35707

D.C. No. 2:11-cv-05093-CI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Submitted June 12, 2014**

Before: McKEOWN, WARDLAW, and M. SMITH, Circuit Judges.

Washington state prisoner William D. Smith appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that defendants were deliberately indifferent to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051,

* 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).

1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Smith failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent by failing to provide him with medical tennis shoes. *See id.* at 1057-60 (deliberate indifference is a high legal standard; mistakes, negligence, or malpractice by medical professionals are not sufficient to constitute deliberate indifference, nor is a difference of medical opinion or an inmate's difference of opinion with the physician regarding the appropriate course of treatment).

The district court did not abuse its discretion in denying Smith's motion for leave to file an amended complaint. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (reviewing for an abuse of discretion and stating that a district court may deny a motion for leave to amend if permitting the amendment would unduly delay the litigation or prejudice the opposing party).

We reject Smith's contentions that the magistrate judge was biased against him, his medical records were tampered with, defendants fabricated evidence, and his objections to the report and recommendation should have been considered timely.

AFFIRMED.