

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 22 2015

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

HORACE SUBLETT,

Plaintiff - Appellant,

v.

DAVID W ROBERTSON, D.O.,
Physician, Provider at Manzanita Unit,
Tucson; PAUL BOSSELER, N.P.,
Provider at Manzanita Unit, Tucson;
BRUCE E. KANTER, M.D., Physician,
Provider, Barchey Unit, Buckeye;
HELENA VALENZUELA, FHA,
Physician FHA Provider, Manzanita Unit,
Tucson; JOHN E. LOCKHART, Physician
at Barchey Unit, Buckeye; JAMES A.
CLENNEY, Physician, RHA at Manzanita
Unit, Tucson; TAMMY NASH, Physician,
FHA at Manzanita Unit, Tucson; TERRY
L. ALLRED, Physician, FHA at Barchey
Unit, Buckeye; CHARLES L. RYAN,
Director, State Director,

Defendants - Appellees.

No. 13-15979

D.C. No. 4:11-cv-00539-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

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

Frank R. Zapata, Senior District Judge, Presiding

Argued and Submitted January 13, 2015
San Francisco California

Before: CLIFTON and NGUYEN, Circuit Judges, and RAKOFF, Senior District Judge.**

Horace Sublett appeals the district court's denial of his motion for a preliminary injunction and grant of summary judgment for Doctor Lockhart and Director Ryan. We affirm.

Even if Dr. Lockhart showed deliberate indifference by failing to ensure Sublett was seen by a dermatologist following his referral, Sublett did not present evidence that he suffered any harm as a result. Under Dr. Lockhart's treatment of Sublett's leg sores and ulcers, Sublett's condition improved at times. When Sublett saw specialists, they provided similar treatment plans. Further, while it may have been reasonable to infer that the Unna boot was the preferred treatment as of July 2010, no evidence established that Dr. Lockhart's prescribed treatments were inappropriate in 2008 and 2009 or that use of the Unna boot earlier would have produced any better results. Therefore, the district court correctly granted summary judgment for Dr. Lockhart.

** The Honorable Jed S. Rakoff, Senior District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

The district court implicitly addressed Sublett's permanent injunction claim against Director Ryan when it granted summary judgment on all claims. To the extent the district court erred by not expressly addressing the permanent injunction, any error was harmless. As the district court determined, Sublett did not raise any genuine issues of material fact regarding success on the merits of his Eighth Amendment claim against Director Ryan. Sublett's other treatments were consistent with that recommended by specialists and helped alleviate his pain. Although the Doppler study could have helped examine the underlying cause of Sublett's pain, no evidence supported the proposition that the results would have changed Sublett's treatment plan or reduced his pain. Therefore, Sublett did not present evidence to suggest the referral denials caused him any harm.

Because we affirm the district court's summary judgment on Sublett's permanent injunction claim, Sublett's motion for preliminary injunction is moot.

AFFIRMED.