

MAR 27 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RODNEY ORR,

Plaintiff - Appellant,

v.

TRACY SELVES; et al.,

Defendants - Appellees.

No. 14-35082

D.C. No. 6:12-cv-01273-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Rodney Orr, an Oregon state prisoner, appeals pro se from the district court's summary judgment dismissing his 42 U.S.C. § 1983 action alleging that defendants were deliberately indifferent to his safety in failing to protect him from

* 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).

being poisoned by other inmates. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Lemire v. Cal. Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074 (9th Cir. 2013). We affirm.

The district court properly granted summary judgment because Orr failed to raise a genuine dispute of material fact as to whether defendants knew of and disregarded an excessive risk to Orr's safety from food poisoning by other inmates. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“[A] prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate . . . safety [.]”).

The district court did not abuse its discretion in deciding defendants' motion for summary judgment without conducting a hearing. *See Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n.2 (9th Cir. 2001) (district courts have discretion to decide motions without oral argument); *see also* D. Or. L. R. 7-1(d)(1) (explaining that motions are decided without oral argument “unless the Court determines that oral argument would help it resolve the matter.”).

The district court also did not abuse its discretion by denying Orr's motion for appointment of counsel because he failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and discussing the “exceptional circumstances”

requirement).

We reject as unsupported Orr's contentions regarding conspiracy, placement in the Special Management and Mental Health Unit, and forced medication.

We do not consider the declaration of Orr's mother and the documents relating to Orr's evidence confiscation argument, attached as exhibits to his reply brief, because they were not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

AFFIRMED.