

SEP 04 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT JOSEPH BENGE,

Plaintiff - Appellant,

v.

CHARLES L. RYAN; et al.,

Defendants - Appellees.

No. 15-15438

D.C. No. 2:14-cv-00402-DGC-  
BSB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
David G. Campbell, District Judge, Presiding

Submitted August 25, 2015\*\*

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Arizona state prisoner Robert Joseph Benge appeals pro se from the district court's order denying his motions for a temporary restraining order and preliminary injunction. We have jurisdiction under 28 U.S.C. § 1292(a). We review for an abuse of discretion, *Alliance for the Wild Rockies v. Cottrell*, 632

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\* 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).

F.3d 1127, 1131 (9th Cir. 2011), and we affirm.

The district court did not abuse its discretion in denying Benge's requests for injunctive relief after concluding that, on the record before it, Benge did not establish a likelihood that he would succeed on his deliberate indifference claims, or establish any actual injury arising from the alleged interference with legal photocopies. *See Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014) (plaintiff seeking a preliminary injunction must establish, among other things, that he is likely to succeed on the merits); *see also Lewis v. Casey*, 518 U.S. 343, 348-49 (1996) (actual injury requirement); *Toguchi v. Chung*, 391 F.3d 1051, 1057-60 (9th Cir. 2004) (deliberate indifference is a high legal standard; medical malpractice, negligence, or a difference of opinion regarding the course of treatment is not sufficient).

The district court did not abuse its discretion when it denied Benge's motion to appoint an expert because the request for injunctive relief was not so complex as to require an expert. *See Walker v. Am. Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999) (standard of review).

We do not consider arguments and allegations raised for the first time in the reply brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (*per curiam*).

**AFFIRMED.**