

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 27 2021

FOR THE NINTH CIRCUIT

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

RICHARD JOHNSTON,

No. 19-17560

Plaintiff-Appellant,

D.C. No. 3:16-cv-00754-MMD-
WGC

v.

KAREN GEDNEY; ROMEO ARANAS,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Submitted April 20, 2021**

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

Nevada state prisoner Richard Johnston appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's decision on cross-motions for

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

summary judgment. *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1104 (9th Cir. 2016). We affirm.

The district court properly granted summary judgment for defendants because Johnston failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to Johnston's chronic back pain. *See Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (setting forth requirements for supervisory liability under § 1983); *Toguchi v. Chung*, 391 F.3d 1051, 1060-61 (9th Cir. 2004) (deliberate indifference is a high legal standard requiring a defendant be aware of and disregard an excessive risk to an inmate's health).

The district court did not abuse its discretion by denying Johnston's requests to stay discovery because Johnston failed to adhere to the district court's local rules and did not diligently pursue discovery prior to requesting a stay. *See Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (standard of review for discovery rulings and district court's compliance with its local rules); *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1026-27 (9th Cir. 2006) (district court was within its discretion to deny discovery motion, where the movant's prior discovery efforts were not diligent).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions are denied.

AFFIRMED.