

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2022

FOR THE NINTH CIRCUIT

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

DANIEL MURPHY COSTON,

No. 20-17058

Plaintiff-Appellant,

D.C. No. 1:17-cv-00765-JDP

v.

MEMORANDUM*

MAJIAD RAHIMIFAR, M.D.; MUSHTAQ
AHMED,

Defendants-Appellees,

and

ALCANNO, Medical Doctor; CONALL
MCCABE, M.D.; C. OGBUEHI, Physician
Asst.,

Defendants.

Appeal from the United States District Court
for the Eastern District of California
Jeremy D. Peterson, Magistrate Judge, Presiding**

Submitted February 15, 2022***

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

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

California state prisoner Daniel Murphy Coston 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. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment for Dr. Rahimifar because Coston failed to raise a genuine issue of material fact as to whether Dr. Rahimifar was deliberately indifferent to Coston's postoperative care. *See id.* at 1060-61 (deliberate indifference is a high legal standard and a showing of medical malpractice, negligence, or difference of opinion concerning the course of treatment is insufficient to establish a constitutional deprivation under the Eighth Amendment).

In his opening brief, Coston fails to challenge the district court's grant of summary judgment for Dr. Ahmed, and he has therefore waived any such challenge. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived."); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant . . .").

AFFIRMED.