

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LESLIE STOCKMEIER,
Appellant,
vs.
THE STATE OF NEVADA;
DEPARTMENT OF CORRECTIONS,
GLEN WHORTON, DIRECTOR; R.
BRUCE BANNISTER, NEVADA
DEPARTMENT OF CORRECTIONS
MEDICAL DIRECTOR,
Respondents.

No. 50670

FILED

SEP 05 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

Appellant instituted this action against respondents, alleging a violation of his Eighth Amendment right against cruel and unusual punishment, violation of equal protection under the Fourteenth Amendment, and asserting state law tort claims. Appellant is an inmate within the Nevada Department of Corrections and his claims are based on the alleged unconstitutional and insufficient medical procedures and treatment he received at the prison in connection with his requests for new eyeglasses. Specifically, appellant sought to visit the optometrist and then obtain new eyeglasses. Initially, appellant lacked sufficient funds to meet the co-payment obligation for the optometrist visit. The prison, however, stated that it would allow him to see the optometrist without prepayment, but would debit his prison account. Then, when ordering eyeglasses, appellant complained that it was improper for the prison to wait for his payment request slip to "clear" before ordering the glasses.

Respondents filed a motion to dismiss the complaint, and because both parties attached outside documents, the motion was construed as a summary judgment motion, which the district court granted in favor of respondents.¹

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.² Once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment.³ We review an order granting summary judgment de novo.⁴ Appellant argues that the district court improperly applied the law for his Eighth and Fourteenth Amendment claims and failed to adequately analyze his tort-based claims. We conclude that the district court did not err and therefore affirm the order granting summary judgment.

Appellant's claims arise out of his requests to see an optometrist and order new eyeglasses. In order to assert an Eighth Amendment claim involving medical treatment, the plaintiff must show a

¹See NRCP 12(b).

²Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³Id. at 731, 121 P.3d at 1030-31; NRCP 56(e).

⁴Wood, 121 Nev. at 729, 121 P.3d at 1029.

“deliberate indifference to serious medical needs.”⁵ In order to meet this burden, the plaintiff must establish (1) “a serious medical need by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain”⁶ and (2) “the defendant’s response to the need was deliberately indifferent.”⁷ To satisfy the second factor the plaintiff must show “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.”⁸

In this case, appellant failed to establish that the prison officials’ actions were deliberately indifferent. The prison scheduled appointments with the optometrist and ordered and provided appellant with new eyeglasses as necessary. The fact that the prison required appellant to pay a nominal fee in order to visit the optometrist and obtain the glasses does not constitute cruel and unusual punishment.⁹ Appellant’s argument that the prison’s policy of requiring payment prior to visiting the optometrist violated the constitution lacks merit. The prison did not withhold medical treatment based on a lack of ability to pay, as is evident from appellant’s own situation in this case, in which the

⁵Estelle v. Gamble, 429 U.S. 97, 104 (1976).

⁶Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted).

⁷Id.

⁸Id.

⁹See e.g. Reynolds v. Wagner, 128 F.3d 166, 178 (3d Cir. 1997); Johnson v. Dept. of Public Safety & Corr. Services, 885 F. Supp. 817, 821 (D.Md. 1995).

prison agreed to schedule the optometrist visit even though appellant lacked sufficient funds.

Appellant's argument that his constitutional rights were violated because he was required to choose which type of glasses to order prior to visiting the optometrist also lacks merit. In this case the records show that appellant had been previously prescribed bifocals. When appellant requested a visit with the optometrist, the prison requested prepayment for bifocals, since that was appellant's prescription. Appellant chose to instead pay for single-vision glasses, writing a note to the prison that he did not want the bifocals. The prison is not at fault for appellant's choice. Therefore, the district court did not err in granting summary judgment on the Eighth Amendment claims.

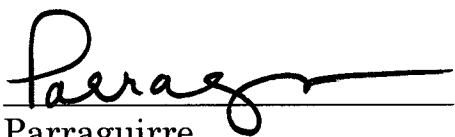
The district court also properly granted summary judgment on appellant's Fourteenth Amendment claim. Appellant claims that the prison policy requiring payment prior to visiting with the optometrist or receiving eyeglasses violates equal protection requirements because it benefits those with money. As pointed out above, this claim is incorrect, as the prison has a policy to allow for treatment when a prisoner lacks sufficient funds and implemented such policy in this case. Thus, there is no unequal treatment and no Fourteenth Amendment violation.

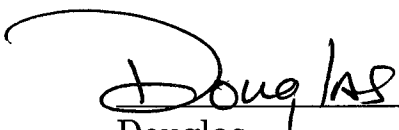
Appellant's state law claims for statutory violations and torts were likewise properly denied by the district court. The statutes cited by appellant allow the prison to charge prisoners to recover medical costs. There is no violation by the prison in assessing such costs against appellant. The prison did not charge more than what it paid for the eyeglasses, and nothing precludes the prison from recovering the full amount it pays. Appellant's tort claims alleged intentional misconduct by

respondents. Appellant failed to present anything to create a material issue of fact¹⁰ to show any intentional misconduct, and therefore summary judgment was properly granted. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. John M. Iroz, District Judge
Robert Leslie Stockmeier
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk

¹⁰See Wood, 121 Nev. at 731, 121 P.3d at 1030-31.