

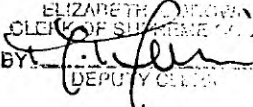
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN JAMES MORALES,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
JAMES DZURENDA; ROMEO ARANAS;  
LUISA SANDERS; AND PAUL BITAR,  
Respondents.

No. 84597-COA

FILED

NOV 03 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a civil rights action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Morales argues the district court erred in granting the respondents' motion to dismiss his complaint. An order granting a NRCPC 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCPC 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

First, Morales claimed that Drs. Sanders and Bitar were deliberately indifferent to his serious dental needs and did not provide him appropriate treatment in a timely manner. Morales alleged that he had an appointment with Dr. Sanders and she identified three cavities in his teeth. She told him that there was insufficient time to fill the cavities at that appointment and that he should request another appointment. At the next appointment, Dr. Sanders told him that she could fill one cavity and the other cavities could wait for the next visit. At the next appointment, Dr. Sanders again filled only one cavity and told Morales that the remaining cavity could wait for a later visit. At the next appointment, Dr. Sanders noticed a new cavity and decided that one needed immediate treatment. She again told Morales to ask for another appointment and the remaining cavity would be treated at that time.

Morales alleged that at the next visit he was seen by Dr. Bitar. Dr. Bitar reviewed Morales' teeth and believed that the cavity had reached the pulp of the tooth. Dr. Bitar told Morales that he believed either a root canal or an extraction was the appropriate option for treatment. Dr. Bitar offered to perform an extraction because a root canal could not be performed at that facility. Morales rejected the extraction option.

Morales was subsequently transferred to a different facility and was treated by its dentist. Morales alleged that the dentist believed that his cavity should have been filled at an earlier time and concluded that he did not need a root canal or an extraction. Morales stated that the dentist successfully filled the cavity.

“Prison officials are deliberately indifferent to a prisoner’s serious medical needs when they deny, delay, or intentionally interfere with medical treatment.” *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (internal quotation marks omitted). To maintain a claim for deliberate indifference to serious medical needs, a “plaintiff must show 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.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted). The plaintiff must also show the response was deliberately indifferent by showing “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Id.*

“[T]he officials conduct must constitute unnecessary and wanton infliction of pain before it violates the Eighth Amendment.” *Hallett*, 296 F.3d at 744 (internal quotation marks omitted). Moreover, “delay in providing a prisoner with dental treatment, standing alone, does not constitute an eighth amendment violation.” *Id.* at 746 (brackets and alteration omitted). In addition, “the plaintiff must show that the course of treatment the doctors chose was medically unacceptable under the circumstances and that the defendants chose this course in conscious disregard of an excessive risk to the plaintiff’s health.” *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016) (internal quotation marks and citation omitted).

Our review of the arguments and record before us on appeal reveals that Morales failed to state a claim of deliberate indifference to his

dental needs against Drs. Sanders and Bitar. As alleged, Dr. Sanders and Dr. Bitar provided treatment and treatment options, and Morales' allegations are insufficient to demonstrate that any delay in treatment violated his rights. Moreover, Morales' allegation that a dentist at a different facility believed that he should have been treated in a different manner amounted to a difference of medical opinion, which does not amount to deliberate indifference. See *Toguchi v. Chung*, 391 F.3d 1051, 1059-60 (9th Cir. 2004) (a difference of medical opinion "cannot support a claim of deliberate indifference"). Morales' allegations are insufficient to show that the course of treatment provided by Dr. Sanders or Dr. Bitar was medically unacceptable under the circumstances or that they chose the treatment options in conscious disregard of an excessive risk to his health. Therefore, Morales fails to demonstrate that he is entitled to relief based on this claim.

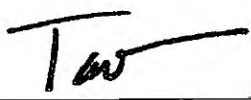
Next, Morales claimed that James Dzurenda and Romeo Aranas were deliberately indifferent to his medical needs because, in their capacities as supervisors, they failed to ensure that he received appropriate dental care. Morales also asserted that he filed a grievance and an inmate request form requesting additional dental services and those documents should have appraised Dzurenda and Aranas of his dental problems.

"A defendant may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (internal quotation marks omitted).

Morales alleged that he filed a grievance and an inmate request form, but he did not allege that Dzurenda or Aranas responded to those documents. Instead, Morales asserted that different correctional employees responded to them. Morales raised no allegations concerning Dzurenda's or Aranas' personal involvement in a constitutional deprivation or that there were sufficient causal connections between either defendant's conduct and a constitutional violation. Accordingly, as alleged, Morales' allegations are insufficient to state a claim of deliberate indifference under the Eight Amendment. Therefore, Morales fails to demonstrate that he is entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jim C. Shirley, District Judge  
Steven James Morales  
Attorney General/Carson City  
Clerk of the Court/Court Administrator