

59 F.3d 175

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.

Michael Eric GONZALES, Plaintiff-Appellee,

v.

James H. GOMEZ; Brenton Textor; Kenneth S. Shephard, M.D., Defendants-Appellants,

and

James ROWLAND, Director, Defendant.

Michael Eric GONZALEZ, Plaintiff-Appellant,

v.

James R. ROWLAND, Director of the California Department of Corrections; James Gomez, Director of the California Department of Corrections; Kenneth Shephard, M.D., Chief Medical Officer; Steve Cambra; Jack Williams; Brenton A. Textor, Defendants-Appellees.

Nos. 92-16238, 92-16682.\*

|

Argued and Submitted June 12, 1995.

|

Decided June 26, 1995.

Appeal from the United States District Court, for the Northern District of California, D.C. No. CV-89-01439-CAL; Charles A. Legge, District Judge, Presiding.

### Synopsis

N.D.Cal.

AFFIRMED.

**Procedural Posture(s):** On Appeal.

Before: SCHROEDER, BEEZER and THOMPSON, Circuit Judges.

### MEMORANDUM\*\*

\*1 Michael Eric Gonzales sued prison officials under 28 U.S.C. § 1983 seeking injunctive relief and damages for deliberate indifference to his medical needs. The district court granted a preliminary injunction which required physical therapy for Gonzales, and eventually entered summary judgment in his favor for nominal damages of one dollar. The defendants appeal the award of nominal damages. Gonzales appeals the district court's summary judgment and its failure to award him actual damages. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

### THE DEFENDANTS' APPEAL

Magistrate Judge Woelflen, who conducted the first evidentiary hearing in this case, found that Gonzales “is in need of supervised physical therapy, of which the defendants' failure to provide may result in a future finding of deliberate indifference.” Magistrate Judge Woelflen made this finding after listening to the evidence presented by experts for Gonzales and the defendants. The district court adopted this finding and ordered the defendants on March 6, 1991 to provide Gonzales with physical therapy. The defendants did not provide the ordered treatment until after they were found in contempt on August 23, 1991.

Prison officials are deliberately indifferent to a prisoner's serious medical needs when they delay treatment. Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992) (quoting Hunt v. Dental Dep't, 865 F.2d 198, 201 (9th Cir. 1989)). Here, the defendants were deliberately indifferent to Gonzales's medical needs when they failed for five months to comply with the court's order for medical treatment. The award of nominal damages to Gonzales was therefore appropriate. Carey v. Piphus, 435 U.S. 247, 266 (1978) (finding of rights deprivation supports the award of nominal damages).

The defendants seem to appeal the district court's award of four additional sessions of supervised physical therapy. These sessions have been completed. There is no longer a live controversy as to this issue; therefore, the defendants' challenge to the award of four additional sessions of physical therapy is moot.

### GONZALES'S APPEAL

Gonzales appeals the district court's summary judgment, contending the court deprived him of his Seventh Amendment right to have a jury determine what he asserts are genuine issues of material fact.

A district court may grant summary judgment sua sponte

Only when 1) no material dispute of fact exists, and 2) the losing party has had an adequate opportunity to address the issues involved, including adequate time to develop any facts necessary to oppose summary judgment.

Fuller v. City of Oakland, 47 F.3d 1522, 1533, amended, F.3d , 1995 WL 234986 (9th Cir. 1995) (citing Cool Fuel, Inc. v. Connett, 685 F.2d 309, 311-12 (9th Cir. 1982)). Both of the Fuller factors are present in this case. There is no dispute of a material fact, and the three-day hearing in front of the magistrate judge acting as special master, at which Gonzales was represented by counsel, was adequate for Gonzales to address and develop the issues.

### CONCLUSION

**\*2** We affirm the district court's judgment of nominal damages in favor of Gonzales. The parties shall bear their own costs and attorney fees for this appeal.

AFFIRMED.

**All Citations**

59 F.3d 175, 1995 WL 378781 (Table)

**Footnotes**

- \* The panel unanimously finds this case suitable for disposition without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.
- \*\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.