

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 25 2022

FOR THE NINTH CIRCUIT

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

ANDREW GUY MORET,

No. 21-35424

Plaintiff-Appellant,

D.C. No. 6:18-cv-01105-MK

v.

MEMORANDUM*

POORNIMA RANGANATHAN; ANDREA
DAILEY,

Defendants-Appellees,

and

OREGON STATE HOSPITAL,

Defendant.

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted March 16, 2022**

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Andrew Guy Moret appeals pro se from the district court's summary

* 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).

judgment in his 42 U.S.C. § 1983 action alleging due process violations arising from the involuntary administration of medication during his pretrial detention. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *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 on Moret's due process claims relating to the involuntary administration of medication after his administrative hearing because Moret received all of the process he was due. *See Washington v. Harper*, 494 U.S. 210, 235 (1990) (holding that due process requires an evidentiary hearing before an independent decisionmaker when a prisoner challenges the involuntary administration of medication); *U.S. v. Loughner*, 672 F.3d 731, 752 (9th Cir. 2012) (*Harper's* due process protections apply to pretrial detainees).

The district court properly granted summary judgment on Moret's due process claims related to the involuntary administration of medication before his administrative hearing because it would not have been clear to every reasonable official that the involuntary administration of medication before a hearing was unlawful under the circumstances. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) ("Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right."); *Foster v. Runnels*, 554 F.3d 807, 815

(9th Cir. 2009) (“A right is clearly established when its contours are sufficiently defined, such that a reasonable official would understand that what he is doing violates that right.” (internal quotation marks omitted)).

The district court did not abuse its discretion in denying Moret’s motion to reinstate his claims against defendants because Moret failed to demonstrate any basis for such relief. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211 (9th Cir. 1987) (requirements for relief from judgment under Federal Rule of Civil Procedure 60(b)(2)).

All pending motions and requests are denied.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 7 2022

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

ANDREW GUY MORET,

Plaintiff-Appellant,

v.

POORNIMA RANGANATHAN; ANDREA
DAILEY,

Defendants-Appellees,

and

OREGON STATE HOSPITAL,

Defendant.

No. 21-35424

D.C. No. 6:18-cv-01105-MK
District of Oregon,
Eugene

ORDER

90 days
from here,
ext. requested.
12-4-22

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Moret's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 48) are denied.

Moret's motion to appoint counsel (Docket Entry No. 50) is denied.

No further filings will be entertained in this closed case.

APPENDIX C

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ANDREW GUY MORET,

Plaintiff,

v.

OREGON STATE HOSPITAL,
POORNIMA RANGANATHAN,
ANDREA DAILEY,

Defendants.

Case No. 6:18-cv-01105-MK

ORDER

MCSHANE, District Judge:

Magistrate Judge Kasubhai filed a Findings and Recommendation (ECF No. 78); and the matter is now before this Court on plaintiff's objections. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). I review *de novo*. *United States v. Bernhardt*, 840 F.2d 1441, 1445 (9th Cir. 1998). I find no error and conclude the report is correct.

Magistrate Judge Kasubhai's Findings and Recommendation issued on April 12, 2021 (ECF No. 78) is ADOPTED in full. Defendants' Motion for Summary Judgment (ECF No. 62) is GRANTED and plaintiff's Motion for Summary Judgment (ECF No. 61) is DENIED. Plaintiff's

state law tort claims and his claims against Oregon State Hospital are DISMISSED. Plaintiff's Motion to Transfer Case to state court (ECF No. 81) is DENIED.

Plaintiff also seeks to reinstate his claims brought under 42 U.S.C. § 1983 against defendants Ranganathan and Dailey based on video evidence he submitted. The video evidence from the Washington County Jail is not relevant to his § 1983 claims alleging the involuntary administration of medication at Oregon State Hospital. Accordingly, I reaffirm my adoption of Magistrate Judge Kasubhai's Findings and Recommendation (ECF No. 52) issued on September 17, 2019, and plaintiff's Motion to Reinstate Claims (ECF No. 83) is DENIED.

IT IS SO ORDERED.

DATED this 12th day of May, 2021.

s/ Michael J. McShane
MICHAEL J. MCSHANE
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ANDREW GUY MORET,

Plaintiff,

v.

OREGON STATE HOSPITAL;
POORNIMA RANGANATHAN;
and ANDREA DAILEY,

Defendants.

Case No. 6:18-cv-01105-MK

FINDINGS AND
RECOMMENDATION

KASUBHAI, Magistrate Judge:

Plaintiff filed suit under 42 U.S.C. § 1983 against Oregon State Hospital (OSH) and two physicians and alleged the forcible administration of medication, medical malpractice, and assault. This Court dismissed plaintiff's claims, and plaintiff appealed. The Ninth Circuit reversed and remanded with respect to plaintiff's state law claims alleging medical malpractice and assault against OSH, because those claims were dismissed by a magistrate judge without consent of the parties. (ECF No. 59)

Defendants now move for summary judgment on plaintiff's claims against OSH.¹ Defendants argue that OSH, as an instrument of the State of Oregon, is immune from suit in federal court. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65-66 (1989).

Under the Eleventh Amendment of the United States Constitution, the State of Oregon and its instrumentalities, such as OSH, are immune from suits seeking damages in federal court. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Beentjes v. Placer Cty. Air Pollution Control Dist.*, 397 F.3d 775, 777 (9th Cir. 2005). Accordingly, summary judgment is appropriate and plaintiff's claims against OSH should be dismissed.

Amendment would be futile, because plaintiff cannot bring tort claims of medical malpractice and assault against the individual defendants. Plaintiff's sole cause of action for torts committed by OSH officials acting within the scope of their employment is an action against OSH under the Oregon Tort Claims Act. *See Or. Rev. Stat. § 30.265(2),(3)*. As stated above, OSH is an arm of the State and is immune from suit for damages in federal court.

CONCLUSION

Plaintiff cannot bring state law claims for medical malpractice or assault against OSH in this action. Accordingly, defendants' Motion for Summary Judgment (ECF No. 62) should be GRANTED and plaintiff's Motion for Summary Judgment (ECF No. 61) should be DENIED.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1) should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of this recommendation within which to

¹ Plaintiff also moves for summary judgment. However, plaintiff's motion addresses the claims of arbitrary and forcible medication alleged against the individual defendants and is beyond the scope of the Ninth Circuit's remand.

file specific written objections with the court. If an objection is filed, any response to the objection is due within fourteen (14) days from the date of the objection. *See* Fed. R. Civ. P. 72. The parties are advised that the failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED this 12th of April 2021.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge

APPENDIX E

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 3/18/2021 at 11:08 AM PDT and filed on 3/15/2021

Case Name: Moret v. Oregon State Hospital et al

Case Number: 6:18-cv-01105-MK

Filer: Andrew Guy Moret

Document Number: 72

Docket Text:

Evidence Submission (This filing includes two conventionally filed DVDs. This conventional filing is maintained in the Clerk's Office but cannot be made a part of the court's electronic record in CM/ECF.) Filed by Andrew Guy Moret. **PRINT NEF ONLY (Andrew Moret, Prisoner ID: 16301890) (joha)**

6:18-cv-01105-MK Notice has been electronically mailed to:

Andrew Guy Moret SRCL_EFiling@doc.state.or.us

Robert E. Sullivan robert.sullivan@doj.state.or.us, brandy.lawrie@doj.state.or.us,
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APPENDIX F

ANDREW GUY MORET, Plaintiff-Appellant,
v.
POORNIMA RANGANATHAN; ANDREA DAILEY, Defendants-Appellees,
and
OREGON STATE HOSPITAL, Defendant.

No. 19-36109

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Submitted October 26, 2020**

October 29, 2020

NOT FOR PUBLICATION

D.C. No. 6:18-cv-01105-MK

MEMORANDUM*

Appeal from the United States District Court for the District of Oregon
Michael J. McShane, District Judge, Presiding

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Andrew Guy Moret appeals pro se from the district court's summary

Page 2

judgment in his 42 U.S.C. § 1983 action alleging violations of due process due to the involuntary administration of medication during his pretrial detention. We have jurisdiction under 28 U.S.C. § 1291. We review de novo whether the magistrate judge had jurisdiction. *Allen v. Meyer*, 755 F.3d 866, 867-68 (9th Cir. 2014). We vacate and remand.

None of the parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c). The magistrate judge dismissed Moret's state law claims, as well all claims against defendant Oregon State Hospital. *See* 28 U.S.C. § 636(c)(1). Because all parties, including unserved defendants, must consent to proceed before the magistrate judge for jurisdiction to vest, *Williams v. King*, 875 F.3d 500, 503-4 (9th Cir. 2017), we vacate the magistrate judge's July 18, 2018 order and remand for further proceedings as to the dismissed claims and defendant.

In light of our disposition, we do not consider Moret's contentions regarding summary judgment.

Moret's request to submit additional documentation (Docket Entry No. 11) is denied.

The parties will bear their own costs on appeal.

VACATED and REMANDED.

Footnotes:

* 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).
