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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAMES DAVID KARNATH,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>TRACY DANIELS,</p> <p>Defendant - Appellee.</p>
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No. 09-35822

D.C. No. 2:08-cv-01002-RSM

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Washington state prisoner James Karnath appeals pro se from the district court’s judgment dismissing with prejudice his 42 U.S.C. § 1983 action alleging an excessive force claim, and from its order striking as moot his motion to amend.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

court's dismissal for lack of standing. *Colwell v. Dep't of Health and Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009). We review for abuse of discretion dismissal without leave to amend. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). We vacate and remand.

The district court correctly identified critical deficiencies in the operative complaint, and determined that the record showed that Karnath was no longer housed at the facility where the sole defendant—against whom Karnath sought only injunctive relief—worked. However, the district court abused its discretion when it rejected Karnath's motion for leave to amend on the ground that it was moot. *See* Fed. R. Civ. P. 15(a); *see also Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). The court did not discuss the fact that Karnath's proposed second amended complaint added a claim for money damages, analyze whether amendment would have been futile, address Karnath's allegations that he could not file his proposed second amended complaint earlier due to lack of access to his legal papers, point to any harm to defendant, or explain why the matter was moot. *See Lucas*, 66 F.3d at 248. Thus, we vacate the judgment and remand for further proceedings consistent with this disposition.

We grant Karnath's request for judicial notice of pages omitted from his opening brief. Karnath's remaining motions are denied as moot.

The parties shall bear their own costs on appeal.

VACATED AND REMANDED.