

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2022

FOR THE NINTH CIRCUIT

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

AUBREY LEE BROTHERS II,

No. 21-16810

Plaintiff-Appellant,

D.C. No. 1:17-cv-00607-DAD-HBK

v.

MEMORANDUM*

CHITA BUENAFE; N. RAMIREZ; T.
HOOD,

Defendants-Appellees,

and

N. FLORES,

Defendant.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

California state prisoner Aubrey Lee Brothers, II, appeals pro se from the

* 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).

district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Brothers failed to raise a genuine dispute of material fact as to whether defendants caused an orbital wall fracture during a dental procedure or were deliberately indifferent to his pain. *See Colwell v. Bannister*, 763 F.3d 1060, 1068 (9th Cir. 2014) (stating that a difference of opinion between a physician and a prisoner concerning appropriate medical care does not amount to deliberate indifference); *Toguchi*, 391 F.3d at 1057-60 (explaining that a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; medical malpractice or negligence does not amount to deliberate indifference); *see also Safari Club Int'l v. Haaland*, 31 F. 4th 1157, 1176-77 (9th Cir. 2022) (concluding that bare assertions unsupported by evidence in the record are insufficient to survive summary judgment). Although the district court mistakenly noted that Brothers did not attach any exhibits to his opposition to summary judgment, Brothers did in fact submit exhibits and the district court reviewed them before issuing its order.

Brothers's motion to accept his opening brief in place of the reply brief

(Docket Entry No. 26) is granted.

AFFIRMED.