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DEC 19 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES KELLY,

Plaintiff-Appellant,

v.

DON HELLING; GREG SMITH; ISIDRO
BACA; JAMES G. COX; E. K.
MCDANIEL; NEVADA DEPARTMENT
OF CORRECTIONS,

Defendants-Appellees.

No. 14-17308

D.C. No.

3:13-cv-00551-RCJ-WGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted December 15, 2016**
San Francisco, California

Before: LUCERO,*** GRABER, and HURWITZ, Circuit Judges.

* 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. Fed. R. App. P. 34(a)(2).

*** The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Plaintiff James Kelly timely appeals the district court's orders (1) granting summary judgment to Defendants Nevada Department of Corrections and individual correctional officers and (2) awarding attorney fees. We affirm.

1. On appeal, Plaintiff challenges summary judgment on a ground—claim preclusion—that he failed to argue to the district court. He therefore waived the argument. To the extent that we have discretion to reach the issue, Bolker v. Comm'r, 760 F.2d 1039, 1042 (9th Cir. 1985), we decline to exercise our discretion.

2. The district court did not abuse its discretion in awarding attorney fees. See Kelly v. Wengler, 822 F.3d 1085, 1094 (9th Cir. 2016) (stating standard). Defendants ask us to "correct" an alleged error in the calculation of fees by increasing the award of fees. Because Defendants did not cross-appeal, we may not consider this suggestion. See Greenlaw v. United States, 554 U.S. 237, 244 (2008) (holding that, under the "cross-appeal rule, . . . an appellate court may not alter a judgment to benefit a nonappealing party"); El Paso Nat. Gas Co. v. Neztosie, 526 U.S. 473, 479 (1999) ("Absent a cross-appeal, an appellee may urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court, but may not attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary." (internal quotation marks omitted)).

AFFIRMED.