

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2017

FOR THE NINTH CIRCUIT

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

GERALDINE KELLEY DARDEN,

Plaintiff-Appellant,

v.

CHRISTOPHER L. DRISCOLL, as
executor of the estate of Dr. Scott H. M.
Driscoll,

Defendant-Appellee.

No. 17-15015

D.C. No. 1:12-cv-01001-EPG

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Erica P. Grosjean, Magistrate Judge, Presiding**

Submitted November 15, 2017***

Before: CANBY, TROTT, and GRABER, Circuit Judges.

Geraldine Kelley Darden, a California state prisoner, appeals pro se from the district court's summary judgment in her 42 U.S.C. § 1983 action alleging

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

deliberate indifference to her serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). We affirm.

The district court properly granted summary judgment on Darden's Eighth Amendment claim because Darden failed to raise a genuine dispute of material fact as to whether Dr. Driscoll knew of and disregarded an excessive risk to her serious medical needs. *See id.* (to demonstrate deliberate indifference, the plaintiff must show "a purposeful act or failure to respond to a prisoner's pain or possible medical need and . . . harm caused by the indifference").

The district court did not abuse its discretion in considering the expert declarations of two doctors submitted by Dr. Driscoll in support of his motion for summary judgment. *See Primiano v. Cook*, 598 F.3d 558, 563, 566-67 (9th Cir. 2010) (setting forth standard of review and requirements for admitting expert testimony).

Darden's motions for appointment of an expert witness, to enforce the district court's order for subpoena duces tecum, and to supplement the record on appeal (Docket Entry Nos. 9, 14, 32) are denied.

AFFIRMED.