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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STACY G. HALL, Plaintiff-Appellant, v. BUDDY MYOTTE; et al., Defendants-Appellees.	No. 21-35603 D.C. No. 6:16-cv-00058-DLC MEMORANDUM[*]

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, District Judge, Presiding

Submitted December 8, 2022[**]

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Montana state prisoner Stacy G. Hall appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that prison officials were deliberately indifferent to his serious medical needs and compelled him to work in unsafe conditions. We have jurisdiction under 28 U.S.C. § 1291. We

[*] 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).

review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm in part, reverse in part, and remand.

The district court properly granted summary judgment on Hall's deliberate indifference claim arising from the medical treatment defendants provided because Hall failed to raise a genuine dispute of material fact as to whether any defendant was deliberately indifferent to Hall's shoulder injury. *See id.* at 1057-60 (prison officials act with deliberate indifference only if they know of and disregard a risk to the prisoner's health; medical malpractice, negligence or difference of opinion concerning the course of treatment does not amount to deliberate indifference).

The district court granted summary judgment to defendants Myotte and Fode on Hall's unsafe working conditions claim arising from his assignment to clean an inmate isolation cell, concluding that there is nothing inherently dangerous about cleaning ceilings and walls without a step stool or ladder, and that Hall failed to show actual injury resulting from the exposure to fecal matter. However, the evidence that Hall was denied proper equipment to clean high surfaces, and instead instructed to stand on furniture and fixtures in the cell, raised a triable dispute as to whether defendants created dangerous conditions that caused Hall's slip and fall accident. Moreover, Hall raised a triable dispute as to whether he faced a risk of substantial injury resulting from his exposure to biologically hazardous material even if such harm did not occur. *See Morgan v. Morgensen*, 465 F.3d 1041, 1045

(9th Cir. 2006) (setting forth requirements for an Eighth Amendment claim in the prison work context); *cf. Mendiola–Martinez v. Arpaio*, 836 F.3d 1239, 1251-54 (9th Cir. 2016) (summary judgment improper where plaintiff raised a genuine dispute of material fact as to whether the use of restraints during labor and post-partum recovery presented a substantial risk of harm to her and her baby).

The district court granted summary judgment to supervisory defendant Beeson on Hall's unsafe working conditions claim, concluding that Hall failed to allege Beeson was personally involved with the working conditions at issue. However, Hall's verified first amended complaint alleged that he was told by both Myotte and Fode that Beeson had made the decisions to deny Hall hazardous materials training and to deny Hall the use of a step ladder to perform the cleaning work, which raised a triable dispute as to whether Beeson is subject to supervisory liability. *See Rodriguez v. County of Los Angeles*, 891 F.3d 776, 798 (9th Cir. 2018) (explaining that a supervisory official is liable under § 1983 "if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation").

The district court did not abuse its discretion by dismissing Hall's action against the unserved defendants without prejudice because Hall failed to effect proper service of the summons and complaint and otherwise failed to show good

cause for his failure to serve the summons and complaint in a timely manner. *See* Fed. R. Civ. P. 4(m); *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511 (9th Cir. 2001) (setting forth standard of review); *Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 1991) ("An [in forma pauperis] plaintiff must request that the marshal serve his complaint before the marshal will be responsible for such service.").

We reject as without merit Hall's contentions regarding judicial bias.

We reverse the district court's judgment as to defendants Myotte, Fode and Beeson, and remand to the district court for further proceedings on Hall's unsafe working conditions claim against these defendants. We affirm the district court's judgment as to all other defendants.

Each party will bear its own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED.