NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN DAVID PAMPLIN, Plaintiff-Appellant, v. C. LUCAS, R/N CN III, AKA Candis Rambur; et al., Defendant-Appellees.	No. 22-15284 D.C. No. 3:20-cv-00111-CLB U.S. District Court for Nevada, Reno MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Carla Baldwin, Magistrate Judge, Presiding

Argued and Submitted April 21, 2023
San Francisco, California

Before: SCHROEDER, CALLAHAN and BUMATAY, Circuit Judges.

John David Pamplin, an inmate with the Nevada Department of Corrections (NDOC), appeals the district court's dismissal of his disability discrimination claim under Title II of the Americans with Disabilities Act (ADA). Pamplin alleges that prison officials violated the ADA when they assigned him to a housing unit on a hill that exacerbated his physical disabilities and then initially denied his

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

requests to be transferred to another unit. Five months after Pamplin's first request, NDOC transferred him to a different facility and provided him with medical devices to alleviate his physical disabilities. Pamplin subsequently filed a pro se lawsuit in the District of Nevada seeking damages against the prison's "Administration," the "Offender Management Division" of NDOC (OMD), WSCC's Associate Warden Ron Schreckengost, and two nurses, alleging violations of the Eighth Amendment and the ADA.

When the district court screened Pamplin's complaint, it dismissed his ADA claim without prejudice as to all defendants except the two nurses. The district court also dismissed Pamplin's Eighth Amendment claim against OMD with prejudice, and against the associate warden and the "Administration" without prejudice but allowed the claim to proceed against the nurses. After discovery, the district court granted summary judgment in favor of the nurses holding that they were not deliberately indifferent to Pamplin's medical needs under the Eighth Amendment and that Pamplin's requests were requests for treatment that fell outside the scope of the ADA.

Pamplin, now represented by counsel, appeals from the final judgment arguing that the district court erred in dismissing his ADA claim against the "Administration" and OMD in its screening order and erred in dismissing on summary judgment his ADA claim against the nurses as claims for medical

treatment outside the scope of the ADA. Pamplin does not challenge the dismissal of his Eighth Amendment claim. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

When a district court dismisses a pro se prisoner's complaint in the context of the screening process required under 28 U.S.C.A. § 1915A, we review the dismissal de novo, "construing the pro se complaint liberally and taking all the allegations of material fact as true and in the light most favorable to [the plaintiff]." *Byrd v. Maricopa Cnty. Bd. of Supervisors*, 845 F.3d 919, 922 (9th Cir. 2017); *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). An order granting summary judgment may be affirmed only if "'there is no genuine dispute as to any material fact' when viewing the record in the light most favorable to the nonmoving party, such that the moving party 'is entitled to judgment as a matter of law.'" *Id.* (quoting Fed. R. Civ. P. 56(a); *Celotex Corp v. Catrett*, 477 U.S. 317, 322–23 (1986)). Nonetheless, we "can affirm on any ground supported by the record, even when the district court did not address that same ground." *Simmons v. G. Arnett*, 47 F.4th 927, 932 (9th Cir. 2022) (internal citations omitted).

1. The district court erred in dismissing Pamplin's ADA claim against the "Administration" and OMD. Pro se pleadings from inmates must be liberally construed. *United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020). Even when a pro se plaintiff's complaint fails to state a claim, a district court nonetheless must

give the plaintiff leave to amend the complaint unless it is absolutely clear that amendment would not cure the complaint's deficiencies. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). The district court must also provide the pro se plaintiff with notice of the complaint's deficiencies to help ensure that the plaintiff can amend it effectively. *Id.*; *see also Noll v. Carlson*, 809 F.2d 1446, 1448–49 (9th Cir. 1987), *superseded on other grounds by statute as stated in Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000).

Here, Pamplin attempted to state a claim against NDOC and its employees. The district court failed to appreciate that Pamplin's complaint, although using imprecise terms such as "Administration" and "OMD," sought to state a claim against NDOC. Also, the court erred to the extent it suggested that the state and NDOC could not be sued under Title II. *See United States v. Georgia*, 546 U.S. 151, 159 (2006); *see also Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1021 (9th Cir. 2010) *overruled in part on other grounds by Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). Furthermore, the district court failed to clearly give Pamplin leave to amend or to adequately explain how the complaint was deficient. The district court only stated in a footnote that, if Pamplin wanted to sue the "Administration," he must, "at the proper time, move to amend the complaint . . ."

Accordingly, the district court erred in failing to liberally construe Pamplin's complaint and in dismissing the ADA claim against OMD and the "Administration" without providing a sufficient explanation of the complaint's deficiencies and clearly informing Pamplin that he could amend the complaint.

2. The district court also erred in granting summary judgment in favor of the nurses on the basis that Pamplin's request was for medical treatment, and thus fell outside of the scope of the ADA. In *Simmons v. Navajo County*, we held that "[t]he ADA prohibits discrimination because of disability, not inadequate treatment for disability." 609 F.3d at 1022. The district court found that, because Pamplin used the words "treated," "treatment," and "medical" throughout his requests, his allegation against the nurses was that they denied him adequate medical treatment. Liberally construed, Pamplin's allegation is not that he was denied adequate medical treatment, but rather that he was denied a transfer to a flat yard housing unit to accommodate his physical disabilities. But even assuming that Pamplin's complaint requested both transfer and treatment, it should not be treated as only a request for medical treatment. *See id.* at 1021-22.

3. Finally, we cannot affirm the district court's grant of summary judgment for the nurses on Pamplin's ADA claim on any alternative ground. In *Simmons v. Navajo County*, we held that, to state a claim under Title II of the ADA, a plaintiff must allege:

> (1) he is an individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) he was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of [his] disability.

Id. (quoting *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004) (internal quotation marks omitted)). A plaintiff bringing a Title II claim for compensatory damages must prove that the public entity was deliberately indifferent to his need for accommodation. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001); *see also Updike v. Multnomah County*, 870 F.3d 939, 951 (9th Cir. 2017). This deliberate indifference standard requires a showing that (1) the public entity had knowledge of the plaintiff's potential need for an accommodation, and (2) that the public entity, despite that knowledge, failed to "undertake a fact-specific investigation to determine what constitute[d] a reasonable accommodation" for that plaintiff. *Duvall*, 260 F.3d at 1139. A failure to act "must be a result of conduct that is more than negligent []and involves an element of deliberateness." *Id.*

Although the district court did not meaningfully address deliberate indifference under the ADA, the nurses argue that the record shows they were not deliberately indifferent and that we should affirm the district court's grant of summary judgment on this basis. However, a grant of summary judgment can be

affirmed only if "there is no genuine dispute as to any material fact when viewing the record in the light most favorable to the nonmoving party, such that the moving party is entitled to judgment as a matter of law." *Simmons v. G. Arnett*, 47 F.4th at 932 (internal quotations and citations omitted). Here, there appears to be a genuine dispute of material fact regarding the ability of the nurses to grant Pamplin some relief, or at least to process his complaints so that NDOC could provide Pamplin with reasonable accommodation.

In sum, we vacate the dismissal of Pamplin's claims under the ADA against the NDOC and remand to allow him to file an amended complaint. We vacate the grant of summary judgment for the nurses because Pamplin's claim was for accommodation under the ADA and not for medical treatment. Finally, we conclude that on this record there appears to be a genuine issue of material fact as to the nurses' ability to process Pamplin's complaint or grant him some relief.[1]

The district court's orders are **VACATED**, and the matter is **REMANDED**.

[1] We express no opinion as to the merits of Pamplin's underlying claim.