

IN THE UTAH COURT OF APPEALS

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Lawrence M. Jackson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070588-CA
v.)	
)	F I L E D
State of Utah,)	(May 1, 2008)
)	
Defendant and Appellee.)	2008 UT App 151

Sixth District, Manti Department, 040600383
The Honorable Wallace A. Lee

Attorneys: Lawrence M. Jackson, Draper, Appellant Pro Se
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and Orme.

PER CURIAM:

Lawrence M. Jackson appeals the district court's order denying his motion for summary judgment and granting the State's motion for summary judgment. We affirm.

Jackson first asserts that the trial court erred by denying his motion for summary judgment because the State did not file a timely memorandum in opposition to his motion for summary judgment. This court reviews a trial court's legal conclusions and grant or denial of summary judgment for correctness and considers "the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Orvis v. Johnson, 2008 UT 2, ¶ 6, 177 P.3d 600. Rule 56(e) of the Utah Rules of Civil Procedure provides that "summary judgment, if appropriate, shall be entered against a party failing to provide a response." Utah R. Civ. P. 56(e). However, summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. R. 56(c).

Jackson's claims against the State and his motion for summary judgment are based on article 1 section 9 of the Utah Constitution and Title II of the Americans with Disabilities Act

of 1990 (the ADA), 42 U.S.C.A. §§ 12131 et seq. In order to have prevailed on his state constitutional claim, Jackson must have demonstrated a flagrant violation of his constitutional rights. See Spackman v. Board of Educ., 2007 UT 87, ¶¶ 19-21, 16 P.3d 533. Jackson asserts that he was deprived of medical treatment and insulin. However, the undisputed facts indicate that Jackson was offered insulin and that he refused to accept it. The undisputed facts also show that the State did not refuse to provide Jackson with medical treatment. Furthermore, the undisputed facts do not elucidate the requisite deliberate indifference or wanton infliction of pain caused by prison authorities that is necessary to sustain a constitutional violation. See Estelle v. Gamble, 429 U.S. 97, 103-106 (1976); see also Bott v. Deland, 922 P.2d 732, 740 (Utah 1996), overruled in part on other grounds by Spackman, 2007 UT 87, ¶ 20.

Jackson also asserts that prison officials deliberately delayed surgical repair of his eye injury. The undisputed facts show that prison officials timely treated Jackson's injury. Specifically, prison officials appropriately treated his wound in the prison infirmary and then transported him to eye specialists. Furthermore, even if Jackson could demonstrate that a medical mistake was made, such mistake would not qualify for deliberate indifference or wanton infliction of pain by prison authorities.

Jackson next asserts that he was not provided a nutritionally adequate supper, that authorities delayed in providing him with diabetic snack boxes for several hours, and that his handcuffs were too uncomfortable. The undisputed facts indicate that when Jackson requested his snack box, there were no extra snack boxes available and an officer had to procure a snack box from a different location. There is no evidence that any prison authority deliberately delayed providing Jackson with a snack box or that his supper was not nutritionally adequate. Finally, the undisputed facts demonstrate that prison officials adjusted Jackson's handcuffs so that they were as comfortable as possible without compromising officer security. In the absence of any evidence suggesting that prison officials acted with deliberate indifference or that prison officials wantonly inflicted pain upon him, the trial court did not err in concluding that Jackson's constitutional rights were not violated in this regard.

Jackson next asserts that the trial court abused its discretion by allowing the State to file a Martinez report¹ and

1. A Martinez report is a document that a state department of corrections may file when an inmate has sued it or one of its employees alleging constitutional violations. See Martinez v.
(continued...)

by treating it as a motion for summary judgment. Appellate courts grant a trial judge broad discretion in determining how a case shall proceed. See Tschaggeny v. Millbank Ins. Co., 2007 UT 37, ¶ 16, 16 P.3d 615. Thus, we review the trial court's decision for an abuse of discretion. See id. Under this standard, a trial court's decision will be overturned only if there was no reasonable basis for the decision. See id. The trial court granted the State permission to respond to Jackson's numerous claims and filings at one time. The State requested permission to do so in the format of a Martinez report. The Martinez report provided the Utah Department of Corrections's records relating to Jackson's claims, the undisputed facts, Jackson's medical records, and affidavits of prison officials and medical personnel relating to his claims. Because the Martinez report demonstrated that there were no undisputed facts, the trial court properly reached the merits of the case and determined that Jackson's claims failed as a matter of law. Jackson has not demonstrated that the trial court abused its discretion or acted unreasonably in allowing the State to address his voluminous motions and requests at one time.

Jackson next alleges that prison officials violated the ADA by refusing to provide the correct amount of insulin and delayed in treating his eye injury. As a matter of law, a plaintiff may not use the ADA as an avenue to assert medical malpractice claims. See Fitzgerald v. Corrections Corp. Of Am., 403 F.3d 1134, 1144 (10th Cir. 2005). Because Jackson's ADA claim arises from allegations of medical malpractice, the trial court did not err in ruling that such claim failed as a matter of law. Because Jackson's motion for summary judgment failed as a matter of law, the trial court did not err in refusing to grant Jackson's motion for summary judgment. Accordingly, the trial court's analysis of the same legal issues raised by the State in its motion for summary judgment was correct and the State was properly awarded summary judgment.

Jackson next asserts that the State violated his federal constitutional rights under the Seventh Amendment and his state constitutional rights under article I, section 9 by denying his GRAMA request for Nurse Soper's home address. Jackson failed to preserve this issue in the trial court. As a general rule, "claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346. This preservation rule applies to "every claim, including

1. (...continued)

Aaron, 570 F.2d 317, 319 (10th Cir. 1978). A Martinez report analyzes whether there is any factual or legal basis for the inmate's claims. See Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991).

constitutional questions, unless a defendant can demonstrate that 'exceptional circumstances' exist or 'plain error' occurred." Id. Thus, in order to preserve a claim or objection for appellate review, the defendant is required to raise a timely or contemporaneous claim or objection. See State v. Dibello, 780 P.2d 1221, 1226-27 (Utah 1989). Any objection must be timely and specific. See State v. Shickles, 760 P.2d 291, 301 (Utah 1988). Jackson failed to raise this claim in the trial court and has also failed to demonstrate plain error or exceptional circumstances. Thus, this court declines to reach the merits of this issue.

Jackson also asserts that the trial court erred in denying his "motion for order compelling discovery." A trial court is granted broad latitude in handling discovery matters. See Cannon v. Salt Lake Reg'l Med. Ctr., 2005 UT App 352, ¶ 7, 121 P.3d 74. A trial court's decision to deny a motion to compel is reviewed for an abuse of discretion. See id. The trial court determined that the motion did not specify precisely the information sought. However, the trial court concluded that the issue became moot as the State voluntarily produced all of its information and materials relating to Jackson's case in conjunction with the Martinez report. Thus, we cannot say that the trial court abused its discretion in denying Jackson's motion for order compelling discovery.

Lastly, Jackson argues that the trial court abused its discretion when it denied his post-judgment motion for reconsideration. Jackson has already appealed the trial court's October 24, 2007 order denying this very motion for reconsideration. This court previously affirmed the trial court's denial of his motion for reconsideration. See Jackson v. State, 2008 UT App 18U, para. 5 (mem.) (per curiam). This court will not address issues it has previously resolved.

Accordingly, the trial court's order is affirmed.²

Russell W. Bench, Judge

James Z. Davis, Judge

Gregory K. Orme, Judge

2. To the extent that Jackson has raised other issues not specifically addressed above, such issues lack merit.