MCMULLIN V. BRAVO

BOBBIE J. MCMULLIN,
Plaintiff-Appellant,
v.
E. BRAVO, WARDEN GCCF,
GEO CORPORATION GROUP,
INC., NEW MEXICO CORRECTIONS
DEPARTMENT, CORIZON, PHARM
CORR., DOCTOR REED (GCCF),
NURSE K. ALLEN (GCCF),
Defendants-Appellees.

No. 35,394

COURT OF APPEALS OF NEW MEXICO

December 7, 2016

APPEAL FROM THE DISTRICT COURT OF GUADALUPE COUNTY, Matthew J. Sandoval, District Judge

COUNSEL

Bobbie J. McMullin, Clayton, NM, Pro Se Appellant

Simone, Roberts & Weiss P.A., Norman F. Weiss, Albuquerque, NM, for Appellee E. Bravo

Megan L. Jahner, Albuquerque, NM, for Appellee GEO Group Inc.

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: JAMES J. WECHSLER, Judge, M. MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Bobbie J. McMullin Jr. (Appellant) appeals from the district court's order granting summary judgment in favor of E. Bravo, et al. (Appellees). This Court's calendar notice proposed to summarily affirm. Appellant filed a memorandum in opposition to the proposed disposition. We have reviewed Appellant's arguments and remain unpersuaded. We therefore affirm.

{2} We proposed to conclude that summary judgment was proper on the basis that Appellees put forth material undisputed facts, supported by affidavits, regarding the care Appellant received from Appellees Doctor Reed (Dr. Reed) and Nurse K. Allen (N.P. Allen) [2 RP 242-46, 248, 256], and Appellant failed to contest that with affidavits from a medical expert demonstrating that the course of treatment he was provided was not within the prevailing standard of care for his condition. [2 RP 267] *See Associated Home & RV Sales, Inc. v. Bank of Belen*, 2013-NMCA-018, ¶ 29, 294 P.3d 1276 ("A party opposing a motion for summary judgment must make an affirmative showing by affidavit or other admissible evidence that there is a genuine issue of material fact once a prima facie showing is made by the movant." (internal quotation marks and citation omitted)).

{3} Appellant challenges the affidavits submitted by Appellees and the legal tenet that evidence from a medical expert was necessary to overcome summary judgment in this case. [MIO 10] Appellant contends that this is not an issue in which the testimony of a medial expert is required in order to challenge Appellees' undisputed material fact regarding negligence. [MIO 7] We disagree. This Court's notice of proposed disposition cited case law to support the legal tenet that such medical expert testimony was required. *See Lopez v. Reddy*, 2005-NMCA-054, ¶ 9, 137 N.M. 554, 113 P.3d 377 ("The testimony of a medical expert is generally required when a physician's standard of care is being challenged in a medical negligence case."); *see also Villalobos v. Bd. of Cty. Comm'rs of Doña Ana Cty.*, 2014-NMCA-044, ¶ 1, 322 P.3d 439 (affirming summary judgment and holding "that expert testimony is needed to establish the standard of care for monitoring inmates in prisons"). Moreover, Appellant provides no authority pointing to error in fact or law with this Court's proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{4} To the extent Appellant continues to argue that he failed to receive timely notice of the hearing [MIO 3], we reject this contention because we are aware of no authority, and Appellant has cited none, that even requires a district court to hold a hearing on a summary judgment motion. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). This Court has previously recognized that "[i]n considering a motion for summary judgment, the [district] court . . . is not required to[]

hold an oral hearing. . . . when the opposing party has had an adequate opportunity to respond to [the] movant's arguments through the briefing process." *Nat'l Excess Ins. Co. v. Bingham*, 1987-NMCA-109, ¶ 9, 106 N.M. 325, 742 P.2d 537. Appellant filed a written response in opposition to Appellees' summary judgment motion, and there appears to be no basis for the contention that Appellant did not have an opportunity to respond to Appellees' arguments during the briefing process. To the extent that Appellant is self-represented, "[p]ro se litigants must comply with the rules and orders of the court and will not be treated differently than litigants with counsel." *Woodhull v. Meinel*, 2009-NMCA-015, ¶ 30, 145 N.M. 533, 202 P.3d 126; *see also Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84 (stating that "we regard pleadings from pro se litigants with a tolerant eye, but a pro se litigant is not entitled to special privileges because of his pro se status" and that a pro se party "who has chosen to represent himself[ ] must comply with the rules and orders of the court, and will not be entitled to greater rights than those litigants who employ counsel"). Therefore, we conclude that the district court did not err when it granted summary judgment without Appellant's presence at the hearing.

{5} For all of these reasons, and those stated in the notice of proposed disposition, we affirm.

{6} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

M. MONICA ZAMORA, Judge