

United States Court of Appeals
For the Eighth Circuit

No. 21-1941

Emilio Noyola

Plaintiff - Appellant

v.

Stiles, Physician Assistant, FCI Forrest City; Ward, Physician Assistant, FCI
Forrest City; John Elam, Lieutenant, FCI Forrest City; Odems, Lieutenant, FCI
Forrest City; United States of America; Nichols, Officer, FCI Forrest City; United
States Bureau of Prisons

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Delta

Submitted: November 16, 2021
Filed: November 24, 2021
[Unpublished]

Before GRUENDER, SHEPHERD, and KOBES, Circuit Judges.

PER CURIAM.

Federal inmate Emilio Noyola appeals the district court's¹ adverse grant of summary judgment in his Federal Tort Claims Act (FTCA) action. Upon de novo review, see Williams v. Wells Fargo Bank, N.A., 901 F.3d 1036, 1039 (8th Cir. 2018), we conclude that summary judgment was properly granted, as Noyola failed to provide medical expert testimony in support of his claim of medical negligence. See Ark. Code Ann. § 16-114-206(a) (requiring expert testimony regarding standard of care, breach thereof, and proximate causation when alleged negligence is not within jury's comprehension as matter of common knowledge); Wright v. United States, 892 F.3d 963, 966 (8th Cir. 2018) (in FTCA claim, applicable tort law is law of place where act or omission occurred); Mitchell v. Lincoln, 237 S.W.3d 455, 460 (Ark. 2006) (rejecting argument that laymen could understand that internist should follow specialist's recommendations; absent expert testimony demonstrating why recommendations should be followed, jury could not know how, why, or whether failure to follow recommendations caused plaintiff's harm).

We lack jurisdiction to review the magistrate judge's orders denying Noyola's motions for appointment of counsel, as he did not appeal those orders to the district court. See Williams, 901 F.3d at 1042 (when appellant fails to object to magistrate judge's non-dispositive order before district court, appellate court cannot review order). As Noyola does not argue the merits of his claims against the other defendants, those claims are deemed waived. See Waters v. Madson, 921 F.3d 725, 744 (8th Cir. 2019).

The judgment is affirmed. See 8th Cir. R. 47B.

¹The Honorable Brian S. Miller, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable J. Thomas Ray, United States Magistrate Judge for the Eastern District of Arkansas.