

December 16, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

JOSE GARZA,

Plaintiff - Appellant,

v.

CORRECT CARE SOLUTIONS,
contracted with Lansing Correctional
Facility and with Larned Correctional
Mental Health Facility; JOHN DOE,
guard, employed at Lansing
Correctional Facility in 2003,

Defendants - Appellees.

No. 11-3194

(D. Kansas)

(D.C. No. 5:09-CV-03146-SAC)

ORDER AND JUDGMENT*

Before **KELLY, HARTZ, and HOLMES**, Circuit Judges.

Jose Garza filed this action under 42 U.S.C. § 1983 in the United States District Court for the District of Kansas, claiming constitutional violations arising from the denial of medical treatment after an alleged sexual assault while he was

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

an inmate at Lansing Correctional Facility. Defendant Correct Care Solutions, LLC (CCS) is a contractor providing medical care to inmates at Kansas correctional facilities. CCS moved to dismiss, *see* Fed. R. Civ. P. 12(b) or, in the alternative, for summary judgment, *see* Fed. R. Civ. P. 56. The district court issued an order (1) treating CCS's motion as a motion for summary judgment on its affirmative defense of failure to exhaust administrative remedies and (2) giving Mr. Garza time to respond on the issue of exhaustion.

Mr. Garza submitted a number of documents but the district court found that none showed that he had filed an administrative grievance. It granted CCS's motion for summary judgment, dismissing the claims against the defendants without prejudice.

Mr. Garza timely appealed. But his briefs include no discussion of the only relevant issue—whether he exhausted his administrative remedies. We construe pro se petitions liberally, but “we are not required to fashion [the plaintiff's] arguments for him.” *United States v. Fisher*, 38 F.3d 1144, 1147 (10th Cir. 1994). Arguments not raised are waived. *See United States v. Martinez*, 518 F.3d 763, 767 n.2 (10th Cir. 2008) (argument not raised in opening brief was waived).

We AFFIRM the judgment of the district court. We DENY plaintiff's request to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge