

188 F.3d 515

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.

Tommie Lee STEWART, Plaintiff-Appellant,

v.

Kay WALTER; Tom Rolfs; and Ronald McKee, Defendants-Appellees.

No. 98-35804. | D.C. No. CV-97-00281-FVS. | Submitted April 29, 1999.<sup>2</sup> | Decided Aug. 12, 1999.

Appeal from the United States District Court for the Eastern District of Washington, Fred L. Van Sickle, District Judge, Presiding.

Before CHOY, SKOPIL, and WIGGINS, Circuit Judges.

### Opinion

#### MEMORANDUM<sup>1</sup>

\*1 Tommie Lee Stewart ("Stewart"), a Washington State prisoner, appeals pro se the district court's grant of summary judgment to defendant prison officials in his 42 U.S.C. § 1983 action alleging that defendants violated his First Amendment rights when they refused to allow him to possess two books sent directly from the publisher and paid for by his sister. Stewart requested relief in the form of damages and an order allowing him future books irrespective of the purchaser. We review a grant of summary judgment de novo, *see Margolis v. Ryan*, 140 F.3d 850, 852 (9th Cir.1998), and we reverse in part, affirm in part, and remand.

The First Amendment protects the flow of information to prisoners; any limitation on this flow must reasonably relate to a legitimate penological interest. *See Turner v. Safley*, 482 U.S. 78, 89 (1987). We recently held that there is no rational relationship between defendants' gift publication bar and the proffered legitimate governmental interests of controlling the flow of contraband into the prisons, combating fire hazards and maintaining adequate storage space, avoiding over-burdening prison staff, and prohibiting incidents of "strong-arming." *See Crofton v. Roe*, 170 F.3d 957, 959-61 (9th Cir.1999). Accordingly, the district court erred by granting summary judgment on this issue.

We agree with the district court, however, that defendants are entitled to qualified immunity from Stewart's claim for damages. An inmate's right to have a book purchased by a relative was not clearly established when defendants rejected the books purchased by Stewart's sister. *See Alexander v. County of Los Angeles*, 64 F.3d 1315, 1319 (9th Cir.1995). This qualified immunity does not, however, shield defendants from Stewart's requested injunctive relief. *See American Fire, Theft & Collision Managers, Inc. v. Gillespie*, 932 F.2d 816, 818 (9th Cir.1991) ("Qualified immunity is an affirmative defense to damage liability; it does not bar actions for declaratory or injunctive relief."). Thus, we conclude that Stewart is entitled on remand to injunctive relief. *See Crofton*, 170 F.3d at 961.<sup>3</sup>

REVERSED in part, AFFIRMED in part, and REMANDED. Each side will bear its own costs on appeal.

### Parallel Citations

1999 WL 613395 (C.A.9 (Wash.))

### Footnotes

<sup>2</sup> The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R.App. P. 34(a)(2)*.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided

**Stewart v. Walter, 188 F.3d 515 (1999)**

by 9th Cir. R. 36-3.

<sup>3</sup> Stewart's motion for appointment of counsel, filed on April 22, 1999, is denied in light of the outcome of this disposition.