

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN LYNCH : CIVIL ACTION  
: NO. 00-0988  
:  
Plaintiffs, :  
:  
v. :  
:  
CITY OF PHILADELPHIA, :  
ET AL., :  
:  
Defendants. :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

JANUARY 27, 2006

I. BACKGROUND

On March 21, 2000 plaintiff John Lynch, proceeding pro se, filed an action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that various constitutional rights, including his Fourth Amendment right against unreasonable search and seizure, his Fifth Amendment right to due process, and his Eighth Amendment right against cruel and unusual punishment, were violated during his arrest, conviction, and subsequent incarceration (doc. no. 5). Plaintiff's complaint consisted of eleven counts. As to the municipal defendants,<sup>1</sup> only counts IX and X remain.<sup>2</sup>

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<sup>1</sup> The municipal defendants include the City of Philadelphia, Adult Probation and Parole Department, Assistant Chief Miluento, Aaron Finney, Jennifer Frascella, Warden Shields, the Philadelphia Prison System, John Williams, the Philadelphia Police Department Domestic Relations Unit, and Corrections Officer Castro.

<sup>2</sup> Count V filed against Detective John Williams for "abuse of official powers" fails as a matter of law under Heck v. Humphrey, 512 U.S. 477 (1994), for the reasons discussed in the Court's June 24, 2004 order (doc. no. 81).

In count IX, plaintiff alleges that "prison officials" engaged in medical malpractice in violation of the constitutional prohibition against cruel and unusual punishment. In count X, plaintiff alleges Corrections Officer Castro assaulted plaintiff in violation of the constitutional prohibition against cruel and unusual punishment.

Now before the Court is the municipal defendants' motion for summary judgment on counts IX and X (doc. nos. 93 & 94).<sup>3</sup> For the following reasons, summary judgment will be granted.

## II. DISCUSSION

### A. Legal standard

A court may grant summary judgment when "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 judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" if its existence or non-existence would affect the outcome of the suit under governing law. Anderson v. Liberty

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<sup>3</sup> Plaintiff did not file a response to the municipal defendants' motion for summary judgment, nor did he submit a motion requesting specific discovery needed to respond to such motion, despite the explicit opportunity do so as ordered by the Court. The Court then scheduled a hearing on defendant's motion for summary judgment. Plaintiff failed to appear at the hearing, reportedly because he was ill. The Court issued an order directing the parties that the motion would be decided based on the parties' written submissions. The Court provided plaintiff with another opportunity to file a response. Plaintiff again chose not to file a response.

Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" when there is sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. at 248-49. In determining whether any genuine issues of material fact exist, all inferences must be drawn, and all doubts must be resolved, in favor of the non-moving party. Coreqis Ins. Co. v. Baratta & Fenerty, Ltd., 264 F.3d 302, 305-06 (3d Cir. 2001).

When a summary judgment motion is uncontested, the non-responding party does not lose the summary judgment motion by default. Instead, where a movant has the burden of proof and a non-movant does not respond to a motion at all, a district court must still find that summary judgment is "appropriate" under Rule 56©) by determining "that the facts specified in or connection with the motion entitle the moving party to judgment as a matter of law." Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

B. Count IX - Deliberate indifference against "prison officials"

Plaintiff alleges that "prison officials"<sup>4</sup> deprived him of painkillers, and instead gave him aspirin, for pain in his spine

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<sup>4</sup> It is unclear if plaintiff has sued the proper party. If his claim is against prison medical personnel, then the proper party is Prison Health Services, a private corporation that provides all medical services to those incarcerated within the Philadelphia Prison System. Regardless, as discussed below, plaintiff's claim fails as a matter of law.

caused by an alleged fragmented disk. This conduct, plaintiff contends, constitutes "deliberate indifference" rising to the level of an Eighth Amendment violation.

A constitutional violation for failure to provide medical care does not arise unless there is "deliberate indifference to serious medical needs of prisoners" which caused an "unnecessary and wanton infliction of pain." Estelle v. Gamble, 429 U.S. 97, 104 (1976). In Farmer v. Brennan, the Supreme Court clarified the state of mind required to show deliberate indifference by holding that,

a prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantive risk of serious harm exists and he must also draw that inference.

511 U.S. 825, 837 (1994). In other words, the court must determine whether a prison official "acted or failed to act despite his knowledge of a substantial risk of serious harm." Id. at 841.

"Allegations of 'inadvertent failure to provide adequate medical care' or 'negligent . . . diagnosis' fail to establish the requisite culpable state of mind." Wilson v. Seiter, 501 U.S. 294, 297 (1991). "Nor does mere disagreement as to the proper medical treatment support a claim of an eighth amendment violation."

Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).

Likewise, defendants who are not medical personnel are not deliberately indifferent simply because they failed to respond directly to the medical complaints of a prisoner who was already being treated by a medical doctor. See Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). Rather, to find a non-medical prison official deliberately indifferent, that individual must believe or have actual knowledge that the prison doctor or their assistants are mistreating the prisoner. See Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004) (dismissing claim against corrections officer where there were no allegations that he knew of alleged inadequacies of prisoner's medical treatment).

In this case, plaintiff has produced no evidence that prison medical personnel knew of the substantial risk of harm to plaintiff, or that non-medical prison officials knew that medical personnel were mistreating plaintiff. Plaintiff is alleging only that he disagrees with the dosage of the pain medication provided. At the very most, although it does not appear to be the case here, medical personnel were negligent in their diagnosis and treatment. Such conduct does not rise to the level of deliberate indifference. Thus, plaintiff's claim in count IX fails as a matter of law.

C. Count X - Physical abuse by Corrections Officer Castro

Plaintiff alleges that he was thrown against copper pipes by Corrections Officer Castro on December 29, 1999. The municipal defendants argue that the claim fails as a matter of law because

plaintiff failed to exhaust his administrative remedies.

The Prison Litigation Reform Act (PLRA) requires prisoners to exhaust administrative remedies before initiating a lawsuit pursuant to 42 U.S.C. § 1983. The PLRA states:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). Compliance with the exhaustion of administrative remedies requirement is mandatory. See Nyhuis v. Reno, 204 F.3d 65, 67 (3d Cir. 2000). A prisoner must properly exhaust administrative remedies or risk procedural default. Spruill, 372 F.3d 218.

Under Philadelphia Prison System Policy, a grievant must first submit an inmate grievance form to the deputy warden within ten days from the grievable event. The decision of the deputy warden is then reviewed by the warden. If an inmate is unsatisfied with the warden's decision, the inmate may appeal to the commissioner, who is responsible for final review. Only then may the inmate file a claim in federal court.

In this case, plaintiff filed a grievance on January 27, 2000 with respect to the incident with Corrections Officer Castro that occurred on December 29, 1999. Plaintiff, thus, let the ten-day deadline to file a grievance expire. Additionally, prison

records indicate that the matter was "resolved."<sup>5</sup> There is no evidence that plaintiff appealed that determination to the commissioner. In fact, at plaintiff's deposition, he testified that he does not know what happened with the grievance that he filed. (Pl.'s Dep. 56:22-57:6.) In these circumstances, plaintiff's claim fails as a matter of law under the PLRA.

### III. CONCLUSION

For the foregoing reasons, the municipal defendants' motion for summary judgment will be granted. An appropriate order follows.

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<sup>5</sup> Defendants submitted a declaration of Greg Vrato, the Deputy Director of Legal Affairs for the Philadelphia Prison System, who verified this information in the prison system's "Lock and Track" records (doc. no. 95).



