

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

MICHAEL WILLIAMS a/k/a	:	CIVIL ACTION
MICHAEL McPHERSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JERRY BRICKER ET AL.,	:	
	:	
Defendants.	:	No. 96-1532

Memorandum

VanArtsdalen, S.J.

Plaintiff, Michael Williams, a state prisoner currently incarcerated at the State Correctional Institution at Graterford (SGI Graterford), brought this civil rights action, under 42 U.S.C. Section 1983, alleging that defendants acted with deliberate indifference to his medical needs. Plaintiff's amended complaint asserts claims against Norman Barry Stempler, D.O., Dennis L. Moyer, M.D., Arnold Schwartz, D.O., as well as an unnamed doctor.¹ Defendants, Dr. Moyer and Dr. Schwartz, have filed a Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56(c). In his response, plaintiff has filed a cross-motion for summary judgment against Drs. Moyer and

¹ Plaintiff's original complaint stated a claim against Jerry Bricker, the maintenance supervisor at SCI Graterford. I dismissed the claim as frivolous by an order entered February 29, 1997. Summary judgment was entered in favor of Dr. Stempler by memorandum and order entered August 26, 1997. Plaintiff's original complaint did not name Drs. Moyer or Schwartz as defendants. In September of 1996, after receiving leave of court, plaintiff filed an amended complaint naming Dr. Moyer and Dr. Schwartz as defendants.

Schwartz. For the reasons set forth below, the defendants' motion will be granted and plaintiff's motion will be denied.

I. INTRODUCTION

Plaintiff's claims arise from injuries he sustained when he slipped and fell down a flight of stairs at SGI Graterford in March of 1994. Plaintiff alleges that as a result of the fall, he injured his left hip, left thigh, and lower back. Plaintiff asserts that although he complained of his injuries to defendants, defendants acted with deliberate indifference to his medical needs.

Dr. Moyer and Dr. Schwartz are independent contractors associated with Correctional Physician Services, Inc., the health care provider for SGI Graterford. Following his fall, plaintiff began to be treated by Drs. Moyer and Schwartz along with several other doctors associated with Correctional Physicians. For a period of approximately eight months after plaintiff's fall in March of 1994, Drs. Moyer and Schwartz, along with several other physicians at SGI Graterford, prescribed a series of treatments to plaintiff including medications. During this time period, plaintiff's medical records indicate that he was seen by medical personnel on approximately twenty two (22) occasions. When plaintiff's complaints of pain continued, Dr. Moyer referred him to an orthopedist, Dr. Stempler, in November of 1994.

During his first visit to Dr. Stempler in November of 1994, Dr. Stempler examined x-rays of plaintiff's hip and discovered tissue swelling. After this initial evaluation, Dr. Stempler

continued to treat plaintiff on several more occasions. As plaintiff's complaints of pain persisted, Dr. Stempler prescribed a series of treatments including heat treatments and injections of anti-inflammatory medication. From November 1994 until September 1995, plaintiff was also treated by other physicians on as many as twenty (20) or more occasions, including approximately six (6) visits to Dr. Schwartz and five (5) visits to Dr. Moyer.

In September 1995, plaintiff received surgery to remove the swollen tissue. Subsequent to the surgery, plaintiff continued to receive examinations and evaluations from several doctors at SGI Graterford. Plaintiff continued to complain of pain, and in October 1995, Dr. Stempler informed plaintiff that "there was no more that he could do." (Plaintiff's dep. at 27).

II. STANDARD FOR SUMMARY JUDGMENT PURSUANT TO F.R.C.P. 56(c)

Federal Rule of Civil Procedure 56(c) instructs a court to enter summary judgment when the record reveals 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." Summary judgment is inappropriate if the admissible evidence reveals a genuine factual dispute requiring submission to a jury. Summary judgment may not be granted where the evidence is such that a reasonable jury could find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A court must consider the evidence, and all inferences drawn from the evidence, in favor of the non-moving party. See Ting Corp. V. Dow Corning Corp., 822 F.2d 358, 361 (3d Cir. 1987). If a conflict arises between the

evidence presented by the parties, the court must accept as true the allegations of the non-moving party. Anderson, 477 U.S. at 255.

III. DISCUSSION

Plaintiff's Section 1983 claim is premised on the allegation that defendants, Dr. Moyer and Dr. Schwartz, subjected him to cruel and unusual punishment in violation of the Eighth Amendment by acting with deliberate indifference to his serious medical needs. Plaintiff contends that defendants acted with deliberate indifference by failing to provide him with adequate medical treatment from the time of his fall in March of 1994 until he was referred to Dr. Stempler for an orthopedic consultation.

In Estelle v. Gamble, 429 U.S. 97, 104 (1976), the Supreme Court recognized that deliberate indifference to the serious medical needs of prisoners does constitute the "'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment." The Court cautioned, however, that every claim of inadequate medical treatment does not establish a violation of the Eighth Amendment. Id. at 105.

The Third Circuit has interpreted Estelle as establishing a two part test for deliberate indifference claims that "requires deliberate indifference on the part of prison officials and [that] requires the prisoner's medical needs to be serious." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988). It is clear that medical malpractice alone does not give

rise to a constitutional violation. See White v. Napoleon, 897 F.2d 103 (3d Cir. 1990); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081 (3d Cir. 1977); Unterberg v. Correctional Med. Sys., Inc., 799 F. Supp. 490, 497 (E.D. Pa. 1992). Rather, "the indifference must be deliberate and the actions intentional." Hampton, 546 F.2d at 1081.

There is no dispute that plaintiff complained of pain and sought and received medical treatment. Plaintiff's own deposition testimony establishes that defendants, Dr. Moyer and Dr. Schwartz, examined plaintiff on numerous occasions and prescribed a variety of treatments, including medications. Finally, after plaintiff continued to complain of pain, he was referred to an orthopedist for additional treatments, including surgery.

In substance, plaintiff contends that defendants failed to provide him appropriate medical treatment during the seven month period from the time of his fall until he was referred to Dr. Stempler. Plaintiff argues, that despite the numerous examinations rendered by the defendants, X-rays and the prescriptions for pain medications, such as Motrin and Tylenol, he was given, he did not receive appropriate medical care. Plaintiff apparently believes, that defendants should have done more, but it is well established that an inmate has no constitutional right to the medical treatment he thinks appropriate and/or requests. See Nolt v. R.N. Nauroth, 1990 WL

109196, at 5 (E.D. Pa.); Holly v. Rapone, 476 F. Supp. 226, 233 (E.D. Pa. 1979).

There is no evidence to establish that plaintiff should have received a more aggressive course of treatment, as he contends. Plaintiff's medical records do not indicate that he suffered from a bone fracture or any other more serious injury that may have required heightened medical treatment. Quite simply, there is no legally sufficient evidence to establish that defendants intentionally or grossly deviated from the ordinary standard of care for plaintiff's injuries during this seven month time period.

There is absolutely no legally sufficient evidence that any of the defendants, named or unnamed, took or failed to take any action that could be found by a jury to constitute reckless indifference. Absent evidence of an intentional and gross deviation from the ordinary standard of care, the only possible basis for any liability on the part of the defendants would be pursuant to a theory of ordinary negligence. Plaintiff's claims against Drs. Moyer and Schwartz amount, at best, to no more than allegations of "neglect, carelessness, or malpractice . . . [which are] . . . more properly the subject of a tort action in the state courts." Hampton, 546 F.2d at 1081. Viewed in a light most favorable to plaintiff, there is no legally sufficient evidence to establish reckless or deliberate indifference on the part of any of the defendants. Plaintiff's claims clearly do not rise to the level of a constitutional violation.

In an attempt to avoid this conclusion, plaintiff asserts that his complaints of lower back pain were not addressed. Plaintiff apparently contends that although defendants treated his hip injury, defendants were deliberately indifferent to plaintiff's back injury.

Plaintiff has adduced no legally sufficient evidence that defendant's alleged failure to treat his back injury was deliberate or intentional. It is more likely that the treatments Drs. Moyer and Schwartz prescribed, including various medications, were addressed to all of plaintiff's complaints, including his back injuries. Furthermore, Estelle requires that the prisoner's medical condition be "serious" in order to establish an Eighth Amendment violation. See Jones v. Nauroth, 1994 WL 189006, at * 1 (E.D. Pa.). Plaintiff has failed to offer any evidence that his back condition constituted a serious medical condition.

For all of the reasons set forth above, I find that defendants, Dr. Moyer and Dr. Schwartz. are entitled to summary judgment.

An appropriate order follows.

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 :
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 JERRY BRICKER ET AL., :
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 Defendants. : No. 96-1532

ORDER

For the reasons set forth in the accompanying memorandum, it is **ORDERED** that defendants', Dennis L. Moyer, M.D. and Arnold Schwartz, D.O., Motion for Summary Judgment (filed Document No. 68) is **GRANTED** and that judgment is entered in favor of defendants, Dennis L. Moyer, M.D. and Arnold Schwartz, D.O., and against plaintiff, Michael Williams.

It is further **ORDERED** that plaintiff's Motion for Summary Judgment is **DENIED**.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

August 1, 2003