

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICKEY LEE WILLIAMS, : CIVIL ACTION
: :
Plaintiff : :
: :
v. : :
: :
MARY ELLEN HERBERT, EMSA : :
ADMINISTRATOR, and : :
: :
CHARLES E. BUTLER, DR., M.D., : :
: :
Defendants : No. 97-6189

M E M O R A N D U M

Padova, J. June , 1998

Plaintiff Mickey Lee Williams, acting pro se, filed this suit pursuant to 42 U.S.C.A. § 1983 (West 1994 & Supp. 1998), against the two Defendants: Mary Ellen Herbert ("Ms. Herbert,") a registered nurse and Health Services Administrator for PrimeCare (formerly EMSA Limited Partnership), the medical provider under contract to Chester County Prison; and Dr. Charles E. Butler ("Dr. Butler"), a physician employed by PrimeCare at Chester County Prison. Plaintiff claims Defendants violated his civil rights by failing to arrange for him to have arthroscopic surgery performed on his right knee while he was in prison. He further claims that this failure exhibited deliberate indifference to his serious medical need, in violation of the Eighth Amendment to the United States Constitution. He also claims that Defendants unlawfully charged him for medications he received while in prison. Defendants have filed a Motion for Summary Judgment. Plaintiff has failed to file a response. His

positions and many of the factual statements giving his views of his treatment are therefore drawn from his Complaint and his deposition. For reasons that follow, Defendants' Motion will be granted.

I. FINDINGS OF FACT

Plaintiff, Mickey Lee Williams, fell in his back yard and sustained a fracture to his right fibula in May, 1997. (Defts.' Mot. Summ. J. Ex. D, Plaintiff's Deposition Transcript ("Tr.") at 14; Defts.' Mot. Summ. J. Ex. C, Medical Records ("Medical Records"), 5/12/97 letter Caggiano/Latoff.) Plaintiff's brother took him to Brandywine Hospital, where his leg was X-rayed and immobilized. (Tr. at 14-16.) The following day Plaintiff went to see Dr. Caggiano, an orthopedist, who put his leg in a cast. Id. Upon removing the cast, Dr. Caggiano noted that the fracture had healed quite well, and that Plaintiff had a full range of motion, but he also noted some swelling, tenderness, and occasional giving way of the knee. Dr. Caggiano believed Plaintiff might have suffered a meniscal injury along with his fracture, and ordered an MRI of the knee. (Medical Records, 5/12/97 letter.)

A few days later, before Dr. Caggiano had discussed the test results with him, Plaintiff was incarcerated at Chester County Prison. (Tr. at 19.) Shortly thereafter, Dr. Caggiano spoke with Plaintiff's mother about the test results. (Tr. at 19-20.) He recommended arthroscopic surgery, and asked that

Plaintiff call him from prison to review the test results. (Medical Records, Caggiano notes of 8/8/97.) Plaintiff never contacted Dr. Caggiano, and the surgery was never scheduled. (Tr. at 20.)

Plaintiff was in prison from August, 1997, until February, 1998. (Tr. at 8; Medical Records, notes of 3/13/97.) While in prison, Plaintiff continued to experience pain, swelling, and tenderness in his right knee and leg. In addition, the right knee continued to give way under him at times. (Tr. at 26-27.)

Plaintiff received medical treatment for his knee from Dr. Butler and others while he was incarcerated in Chester County Prison. He was seen on a regular basis and was given an ace bandage for support and Naprosyn for pain. He was also given Lasix to reduce edema. (Defts.'s Mot. Summ. J. Ex. B, Affidavit of Mary Ellen Herbert ("Herbert Aff.") at ¶¶ 10-15; Med. Records, PrimeCare Dispensary Card at 10/20/97.) Nurse Elaine Phillips, an employee of PrimeCare, received a copy of the MRI and notes from Dr. Caggiano's office. (Medical Records, Caggiano office notes of 8/13/97.) Dr. Butler spoke with Dr. Caggiano's partner, Dr. Lyons, regarding the need for the surgery. Dr. Lyons told him that the surgery was elective, that it could be done at any time, and that there was no indication that it needed to be done at that time. (Medical Records, Butler notes of 10/24/97; PrimeCare Records of 10/22/97.) Both Dr. Butler and Elaine Phillips told Plaintiff that Dr. Caggiano's office had said the

surgery could wait. (Id.; Tr. at 35-36.) Plaintiff could have had the surgery done in prison if he had paid for it himself. (Id.) Plaintiff believes that Defendants denied him the surgery solely because of cost. (Id.)

Plaintiff was receiving regular medical treatment in prison, but he disagreed with the specific treatment decisions of prison medical personnel. Specifically, he disagreed with the decision of the medical department to delay surgery. (Tr. at 28-29.) In addition, there were other specific treatment measures Plaintiff had requested but did not receive. He stated, "I even asked them if they send me out for some type of therapy, that I would be satisfied with that . . . , or some type of therapy within the prison, just to work my leg or something like that." (Tr. at 42.)

With respect to the charges Plaintiff incurred for his prescribed medication, Naprosyn, while in prison, it was the prison itself, and not the Defendants, who imposed any such charges. (Herbert Aff. at ¶ 16, 17.)

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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). An issue is "genuine" if the evidence is such that a reasonable

jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under the governing law. Id.

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255, 106 ("The evidence of the

non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.").

III. DISCUSSION

Plaintiff has brought this action pursuant to 42 U.S.C.A. § 1983, which provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983. Defendants have not addressed the question whether they acted under color of state law. For purposes of this Motion, the Court will assume they did. The constitutional deprivation Plaintiff claims is Defendants' violation of his Eighth Amendment right to be free from cruel and unusual punishment.

In order for a plaintiff to show that his medical treatment during incarceration violated his Eighth Amendment rights, he must present "facts or omissions sufficiently harmful to evidence deliberate indifference to [his] serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). As the United States Court of Appeals for the Third Circuit ("Third Circuit") has stated:

[T]his test affords considerable latitude to prison medical authorities in the diagnosis and treatment of medical problems of inmate patients. Courts will disavow any

attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment. Implicit in this deference to prison medical authorities is the assumption that such informed judgment has, in fact, been made.

Inmates of Allegheny County Jail, 612 F.2d 754, 762 (3d Cir. 1979) (internal quotations and citations omitted). However, "where knowledge of the need for medical care is accompanied by the intentional refusal to provide that care, the deliberate indifference standard has been met." Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (internal quotations and citations omitted).

Defendants do not argue that Plaintiff's medical needs were not serious. Instead, they focus on Plaintiff's failure to put forth any evidence that Defendants acted with deliberate indifference. The United States Supreme Court has defined "deliberate indifference" as subjective recklessness, or a conscious disregard of substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 839 (1994). If a defendant knows of a substantial risk to a plaintiff's health and consciously disregards it, he is being deliberately indifferent; however, a complaint that a physician's treatment of a prisoner "has been [merely] negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." Estelle v. Gamble, 429 U.S. at 106.

Deliberate indifference is an element of Plaintiff's claim and he bears the burden of proof on all elements. Defendants, in their Motion for Summary Judgment, have pointed

out that there is an absence of evidence to support Plaintiff's claim of deliberate indifference. To defeat the Motion, Plaintiff must set forth facts showing that there is evidence of deliberate indifference and that there is therefore a genuine issue for trial on this element. Celotex, 477 U.S. at 325, 106 S. Ct. at 2554; Fed.R.Civ.P. 56(e).

Viewing the evidence in the light most favorable to Plaintiff, as the Court must under Federal Rule of Civil Procedure 56, Liberty Lobby, 477 U.S. at 255, Plaintiff has failed to sustain his burden of showing that there is a genuine issue of material fact on the issue of deliberate indifference. It is clear that Defendants did not recognize Plaintiff's need and then refuse to treat it. Dr. Butler made a medical decision based, in part, on review of Plaintiff's MRI and the views of his outside orthopedists that there was no immediate need for surgery. The Medical Department continued to see Plaintiff and continued to treat him for his knee condition; he received an Ace bandage for support, medication for pain and inflammation, and additional medication for edema when it was indicated. Plaintiff claims the treatment was not effective; however, as the Third Circuit stated, "Courts will disavow any attempt to second-guess the propriety or adequacy of a particular course of treatment . . . [which] remains a question of sound professional judgment." Inmates of Allegheny County Jail, 612 F.2d at 762.

In response to Defendant's evidence, Plaintiff has failed to present any evidence of Defendants' actions that

qualifies as deliberate indifference under the controlling case law. Plaintiff failed to file a response to the Motion, but the Court has treated his deposition, reproduced as an exhibit to Defendant's Motion, as his evidence. Based on the submissions in this case, there is no genuine issue of material fact as to one of the elements of Plaintiff's case which he must prove to prevail at trial: Defendants' deliberate indifference. Therefore, the Court must grant Defendants' Motion.

With respect to any state law claims Plaintiff wishes to pursue, the Court declines to exercise its supplemental jurisdiction over state law claims now that the federal suit is resolved in Defendants' favor and against Plaintiff.

IV. CONCLUSIONS OF LAW

Defendants, in their Motion for Summary Judgment, have raised only one genuine issue of material fact on which Plaintiff has the burden of proof at trial: whether Defendants acted with deliberate indifference. Defendants have met their initial burden under Celotex v. Catrett by pointing out to the Court that there is an absence of evidence to support Plaintiff's case on this issue. Celotex, 477 U.S. at 325. In these circumstances, Plaintiff, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). Taking the statements in Plaintiff's deposition as his evidence, the Court concludes that he has presented no such facts and, therefore, that there is no

genuine issue of material fact for trial. Consequently, the Court can decide the Motion as a matter of law and will enter judgment in favor of Defendants and against Plaintiff on Defendants' Motion for Summary Judgment.

An appropriate Order follows.

