

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

ANTHONY PALLADINO : CIVIL ACTION
 :
v. :
 :
WACKENHUT CORRECTIONS, et al. : NO. 97-CV-2401

MEMORANDUM & ORDER

J.M. KELLY, J.

DECEMBER , 1998

Defendants in this action have filed a Motion for Summary Judgment. Although counsel has been appointed to represent the Plaintiff in this matter, he has not replied to this Motion for Summary Judgment. While the motion is unopposed, the Court shall review the evidence in the record to ensure that granting Defendants' Motion is appropriate.

BACKGROUND

Plaintiff, Anthony Palladino ("Palladino"), filed a Complaint against Wackenhut Corrections ("Wackenhut"), the warden of Delaware County Prison ("Warden"), Ms. C. Ward ("Ward"), Dr. M. Carillo ("Carillo"), Dr. Holland Hull ("Hull"), Mr. Shelton ("Shelton") and Nurse Birdie ("Byrd").¹ Palladino was incarcerated at Delaware County Prison ("Delaware") from June 21, 1996, through October 11, 1996. Delaware is managed by Wackenhut. Ward was the administrator of medical care. Carillo was a doctor at Delaware. Hull was a psychiatrist at Delaware.

¹Defendants identify this person as "Nurse Byrd." The Court shall follow that identification.

Shelton was a mental health worker at Delaware. Byrd was the intake nurse at Delaware. Palladino alleges that Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by failing to treat his diabetes and depression with medications he was taking prior to his being incarcerated at Delaware. Upon being incarcerated at Delaware, Palladino was diagnosed as having inactive tuberculosis, which he also alleges Defendants failed to treat.

Specifically, Palladino alleges that Defendants failed to prescribe Glucotrol until July 16, 1996, when five milligrams daily was prescribed. On August 14, 1996, the Glucotrol prescription was increased to ten milligrams daily, the amount he was taking prior to his incarceration at Delaware. Palladino alleges that as a result of four weeks without Glucotrol and four weeks on a reduced dose, he suffered from and continues to suffer from numbness in two toes.

Palladino was never prescribed Prozac while at Delaware, despite having a previous prescription for Prozac. Palladino alleges that Delaware would not prescribe Prozac because of the cost. Palladino testified that he had emotional problems, confusion, paranoia, anxiety attacks, shortness of breath and depression while at Delaware, and that these symptoms have been alleviated upon his transfer to the Pennsylvania corrections system.

Palladino was not treated for tuberculosis at Delaware because of his age and his foot condition. He was subsequently treated for tuberculosis while incarcerated in the Pennsylvania prison system. Palladino stated in his deposition testimony that he now has an uncontrollable cough that he attributes to his untreated tuberculosis.

DISCUSSION

A. Standard for Summary Judgment

Under Fed. R. of Civ. P. 56(c), summary judgment "shall be rendered forthwith if 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 a judgment as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of

material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a 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. 317, 322-23 (1986).

B. 42 U.S.C. § 1983 Medical Maltreatment Claims

The validity of an inmate's claim for medical maltreatment depends on whether it represents cruel and unusual punishment. In Estelle v. Gamble, the Supreme Court held that "the deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment." 429 U.S. 97, 104 (1976). This standard has been split into a two part test: (1) deliberate indifference by the prison official and (2) serious medical need by the prisoner. West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (citing Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979), aff'd, 649 F.2d 860 (3d Cir. 1981)). In addition, "[t]he seriousness of an inmate's medical need may also be determined by reference to the effect of denying

the particular treatment"; e.g., the suffering of a "lifelong handicap or permanent loss." Id. at 347.

The Supreme Court clarified the mental state required to show an official's deliberate indifference in Farmer v. Brennan, 511 U.S. 825 (1994). The Court held that an official shows deliberate indifference when he "knows of and disregards an excessive risk to inmate health or safety: the official must both be aware of facts from which the inference could be drawn that a substantial harm exists, and he must also draw the inference." Id. at 837. In other words, deliberate indifference does not occur where the official fails to alleviate a significant risk that he should have identified but failed to do so. Id.

In Estelle, the Court identified three situations where deliberate indifference to serious medical needs may be manifested: (1) "by prison doctors in their response to the prisoner's needs," (2) "by prison guards in intentionally denying or delaying access to medical care," or (3) by prison guards in "intentionally interfering with the treatment once prescribed." Estelle, 429 U.S. at 104-05 (footnotes omitted). Nevertheless, claims for negligent diagnosis or treatment do not rise to the level of deliberate indifference. Id. at 106. A doctor's decision whether to order specific diagnostic techniques or forms of treatment is within his medical judgment, and it does not

represent cruel and unusual punishment under the Eighth Amendment. Id. at 107. Even "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." Id. at 106.

"Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978). Consequently, a claim for the violation of the Eighth Amendment will not succeed unless the medical treatment received consists of "act[s] which were either intentionally injurious, callous, grossly negligent, shocking to the conscience, unconscionable, intolerable to the fundamental fairness or barbarous." Id.

Inadequate medical treatment claims under § 1983 must be denied where the medical treatment provided by officials does not comport to the inmate's specific requests since "complaints merely reflect a disagreement with the doctors over the proper means of treat[ment]." Boring v. Kozakiewics, 833 F.2d 468, 473 (3d Cir. 1987); see also Holly v. Rapone, 476 F. Supp. 226 (E.D. Pa. 1979) (claim under § 1983 denied where medical treatment was provided but prisoner claimed that he did not receive proper medications and an X-ray). Dismissal of a complaint is not proper, however, where prisoners allege, for example, that on numerous occasions a prison doctor intentionally inflicted pain,

continued ineffective courses of treatment and refused to prescribe appropriate medications. White v. Napoleon, 897 F.2d 103 (3d Cir. 1990).

The uncontroverted evidence produced by Defendants and stated by Palladino in his deposition testimony, as well as his Complaint, clearly establishes that he received medical treatment. The cornerstone of Plaintiff's claim is that he does not agree with the Defendants' decision not to prescribe Prozac, to test his ability to go without or use a lesser amount of Glucotrol and not to treat his inactive tuberculosis. Mere allegations of improper or inadequate care are, however, insufficient to state a claim under the Eighth Amendment. Norris, 585 F.2d at 1186. Moreover, even if Defendants' decisions not to prescribe Prozac, to gradually prescribe Glucotrol and not to treat inactive tuberculosis amounted to medical malpractice, a tort is not transformed into a constitutional violation simply because the victim is a prisoner. Estelle, 429 U.S. at 106. Thus, Palladino's claim is nothing more than a disagreement over the medical care that he should have received, and as such fails to allege the "deliberate indifference to serious medical needs" necessary to state a claim under § 1983. Id. at 104.

Equally fatal to Palladino's claim is the complete lack of evidence of Defendants' intention to cause or deliberate

indifference to a potential serious injury. While, if true, the decision not to prescribe Prozac only because of cost considerations is not to be commended, Palladino's deposition testimony is clear that he received some treatment for his mental condition. He also testified that his diabetes was monitored from the time he entered Delaware and he incrementally received his pre-incarceration level of Glucotrol. The uncontroverted evidence reveals that the decision not to treat Palladino's inactive tuberculosis was a medical judgment. Accordingly, Palladino has failed to demonstrate the deliberate indifference essential to his Eighth Amendment claim. Id.

Finally, Palladino cannot show that he suffered a serious injury required to support his constitutional claim. While Palladino continues to suffer from two numb toes, that does not amount to a serious injury sufficient to support an Eighth Amendment claim. His depression and anxiety are now controlled, hence there was no permanent injury. Likewise, his cough does not rise to the level of a permanent disability to support an Eighth Amendment claim.²

C. Conclusion

Palladino has failed to produce evidence to support his claim of inadequate medical treatment. Palladino's disagreement

²The Court also notes that there is no competent evidence in the record to link either Palladino's cough to his inactive tuberculosis or his toe numbness to his diabetes treatment.

over the care provided by the Defendants does not rise to the level of a violation of his Eighth Amendment rights. Palladino has also failed to show any evidence of Defendants' deliberate indifference or a serious injury to support a constitutional violation. Therefore, the court shall grant the Defendants' Motion for Summary Judgment. To the extent that Palladino's Complaint may state a cause of action for pendant state law claims, those claims are dismissed and Palladino is free to pursue other avenues of relief in an appropriate forum.

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O R D E R

AND NOW, this day of December, 1998, upon consideration of the Motion for Summary Judgment of the Defendants, to which no response has been filed, and after a review of the record in this matter, it is ORDERED that the Motion is GRANTED. Judgment is ENTERED in this matter in favor of Defendants Wackenhut Corrections, the warden of Delaware County Prison, Ms. C. Ward, Dr. M. Carillo, Dr. Holland Hull, Mr. Shelton and Nurse Birdie (a.k.a. "Nurse Byrd") and against Plaintiff, Anthony Palladino.

This case is now closed.

BY THE COURT:

JAMES MCGIRR KELLY, J.