

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

RENO THORNTON,

Plaintiff,

v.

ERNEST V. CHANDLER, et al.,

Defendants.

CIVIL ACTION

NO. 02-6697

MEMORANDUM

ROBERT F. KELLY, Sr. J.

APRIL 4, 2003

Presently before this Court is the Motion for Summary Judgment filed by the Defendants: Ernest V. Chandler, the Warden of the Philadelphia Federal Detention Center (“FDC”); Wendy Roal, the Assistant Warden of the FDC; Dr. Gary Reynolds, the Medical Officer of the FDC; Aramis Martinez, the Health Services Administrator of the FDC; and the United States of America in lieu of the Federal Detention Center. The *pro se* Plaintiff, Reno Thornton (“Thornton”) alleges in his Complaint that the Defendants violated his 42 U.S.C. § 1983 (“§ 1983”) and Eighth Amendment rights by failing to provide him with adequate medical care while incarcerated at the FDC. For the reasons that follow, the Motion will be granted.

I. FACTS

On April 4, 2002, Thornton was removed from the Lancaster County Prison to the FDC because he was scheduled to testify at a trial. On that same day, during Thornton’s initial intake screening, he reported numerous medical problems including the presence of masses on his body, some of which were on his head. According to Thornton, the masses on his head began developing around November 23, 2001. During a subsequent evaluation on April 17, 2002,

Thornton complained that a mass on his head was causing him to have headaches. During medical evaluations in April and June 2002, the FDC medical staff noted several masses on Thornton.

On June 20, 2002, Thornton was scheduled to see a surgeon regarding the masses. However, the surgeon had to cancel his visit to the FDC on that date, and the visitation was rescheduled for June 27, 2002. The surgeon also had to cancel this second date. Therefore, on July 18, 2002, Thornton was brought to the surgeon's office for an examination where the surgeon diagnosed him with multiple lipomas, which are benign tumors consisting of fat cells. According to the Defendant Dr. Gary Reynolds, lipomas do not become malignant and treatment options are elective. Thornton filed two grievances because of the delays in his examination by the surgeon. A CT Scan, completed on August 28, 2002, confirmed the diagnosis of multiple lipomas. On September 24, 2002, two of the lipomas were removed and a biopsy of each was performed. The lipomas were found to be benign.

In his present Complaint, Thornton alleges that the Defendants provided him with inadequate medical care, unreasonably delayed his examinations, failed to keep him informed of his condition, failed to provide him with the proper medical tests, and failed to treat his many other alleged ailments. Thornton avers that the pain that he was experiencing grew during the delays in his treatment and that he experienced emotional distress because he did not know whether his condition was life threatening. Thornton contends that such activities amount to a violation of his rights under § 1983 and the Eighth Amendment.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is

entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987). Lastly, we note that *pro se* complaints are to be held to less stringent standards than formal pleadings drafted by lawyers and are to be liberally construed. Estelle v. Gamble, 429 U.S. 97, 106 (1976).

III. DISCUSSION

In order to establish a claim under § 1983 based on the Eighth

Amendment, Thornton must show that the Defendants were deliberately indifferent to a serious medical need. Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754 (3d Cir. 1979). In Reynolds v. Wagner, 128 F.3d 166, 172 (3d Cir. 1997), the Third Circuit stated that in order to be successful on an Eighth Amendment claim alleging a denial of, or lack of, adequate medical care, the inmate plaintiff must show: “(1) that the prison officials were deliberately indifferent to the inmates’ medical needs and (2) that those needs were serious.” Reynolds 128 F.3d at 172 (citing Estelle, 429 U.S. at 104). However, “[c]ourts 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.’” Pierce, 612 F.2d at 762 (quoting Bowring v. Godwin, 551 F.2d 44, 48 (4th Cir. 1977)). Therefore, a mere difference of opinion concerning the treatment received by the inmate is not actionable under the Eighth Amendment and § 1983. Monmouth County Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). Claims of medical malpractice in the prison setting are also not actionable under § 1983. Parham v. Johnson, 126 F.3d 454, 458 n. 7 (3d Cir. 1997) (recognizing “the well-established law in this and virtually every circuit that actions characterizable as medical malpractice do not rise to the level of ‘deliberate indifference’ under the Eighth Amendment”).

In order for there to be deliberate indifference, the prison physician’s acts must constitute “an unnecessary and wanton infliction of pain”, be “repugnant to the conscience of mankind” or offend the “evolving standards of decency.” Estelle, 429 U.S. at 106. A medical need is serious if it 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.” Lanzaro, 834 F.2d at 347 (internal quotations omitted). Furthermore, “[w]here 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)(quoting Roach v. Kligman, 412 F. Supp. 521, 525 (E.D. Pa. 1976)).

Here, Thornton received treatment for the multiple lipomas, however, he claims that the delays in receiving treatment were unreasonable. While it is true that Thornton’s visit to the surgeon was delayed twice, there is no evidence that the Defendants were at fault for the delay, that they wantonly inflicted unnecessary pain on Thornton, or that Thornton suffered “a lifelong handicap or permanent loss” because of the delay. Lanzaro, 834 F.2d at 347 (internal quotations omitted)(discussing when a medical need is considered serious). The medical record shows that the Defendants adequately addressed Thornton’s medical concerns. Moreover, other than his own opinion, Thornton does not provide any evidence that the Defendants provided him with inappropriate treatment for any of his alleged ailments. Thornton has failed to produce any evidence showing acts which are “repugnant to the conscience of mankind” or offend the “evolving standards of decency.” Estelle, 429 U.S. at 106 (discussing when conduct is deliberately indifferent). Therefore, even under the relaxed standard afforded to a *pro se* plaintiff, Thornton cannot establish that the Defendants were deliberately indifferent to a serious medical need. Id.

For the reasons cited above, Thornton has failed to establish that the Defendants violated his rights under § 1983 and the Eighth Amendment. Accordingly, summary judgment must be granted in favor of the Defendants, and Thornton’s case must be dismissed.

An appropriate Order follows.

