

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RICHARD HOEFT,

Plaintiff,

v.

MEMORANDUM and ORDER

DEPUTY STERTZ, DEPUTY SHRADER
and DEPUTY EDENS,

05-C-328-S

Defendants.

Plaintiff Richard Hoeft was allowed leave to proceed on his Eighth Amendment claim against defendants Deputy Stertz, Deputy Shrader and Deputy Edens. In his complaint he alleges that while he was incarcerated at the Dane County Jail he requested medical attention six times in a month from defendants and did not receive it.

On September 6, 2005 defendants Stertz and Edens moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Plaintiff's response to this motion was to be filed not later than September 26, 2005 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter

of law. Rule 56, Federal Rules of Civil Procedure. This motion has been fully briefed and is ready for decision.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

FACTS

For purposes of deciding defendants' motions for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Richard A. Hoeft was an inmate at the Dane County Jail from February 11, 2004 to April 7, 2004. He is currently incarcerated at the Stanley Correctional Institution. Defendants Heather Stertz and Leroy Edens are Dane County deputy sheriffs employed at the jail. No one by the name of Deputy Shrader is employed at the jail.

Upon his arrival at the Dane County Jail on February 11, 2004 plaintiff was screened for medical problems. On February 25, 2004 plaintiff had a physical performed by jail physician Dr. Young.

On March 23, 2004 plaintiff filled out a medical request stating: "I feel real dizzy, right side numb, really bad headache, can't stand for very long without feeling faint." He was assessed by Nurse Shaya Berg the same day and found to be normal. Tylenol was ordered for him. The order was changed to Acetaminophen on March 24, 2004 and Ibuprofen on March 25, 2004.

On March 25, 2004 plaintiff complained of blood in his stool. He was assessed by a nurse on March 26, 2004 and provided hemocult cards to test for blood in stool. On April 9, 2003 plaintiff complained of blood in his stools stating that it occurred many times a day for a month. He was seen the same day by a nurse, provided more hemocult cards and advised to notify the deputy at his next bowel movement in order to verify that there was blood in his stool.

On April 24, 2004 plaintiff submitted two sick call slips indicating he continued to have diarrhea and that his right leg was numb. On April 26, 2004 he was assessed by a nurse who observed him stand on his numb leg. She concluded he likely had a virus and referred him to be seen by the physician. Plaintiff was transferred from the Dane County Jail on April 27, 2004 before he was seen by the physician.

MEMORANDUM

Defendants Stertz and Edens move for summary judgment on plaintiff's Eighth Amendment claim. In opposing defendants'

motions for summary judgment plaintiff cannot rest on the mere allegations of the pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has submitted no affidavits or evidence that contradict the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Deliberate indifference of a serious medical need violates an inmate's Eighth Amendment rights. Estelle v. Gamble, 429 U.S. 97 (1976). Defendants called a nurse each time plaintiff had a medical complaint. They relied on the expertise of the medical staff. Defendant deputies did not ignore plaintiff's requests for medical attention but relayed them immediately to medical staff who responded. The undisputed facts indicate that the deputies were not deliberately indifferent to any of plaintiff's medical needs. Accordingly, defendants Stertz and Edens are entitled to judgment in their favor as a matter of law and their motion for summary judgment will be granted.

Deputy Shrader will be dismissed without prejudice because the United States Marshal was unable to serve him at the address provided by plaintiff. It appears from the record that plaintiff may have been attempting to name Deputy James Schroeder as a defendant but did not do so. Any claim against deputy Schroeder

cannot be pursued because the undisputed facts demonstrate that plaintiff's requests for medical attention were addressed.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Deputy Stertz and Deputy Edens is GRANTED.

IT IS FURTHER ORDERED that defendant Deputy Shrader is DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants Deputy Stertz and Deputy Edens against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs and in favor of Deputy Shrader against plaintiff dismissing his complaint without prejudice.

Entered this 29th day of September, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge