IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN R. LOCKE,

Plaintiff,

v. MEMORANDUM and ORDER

GREGORY GRAMS, DR. BREVARD and THOMAS F. SCHOENBERG, 06-C-157-S

Defendants.

Plaintiff Brian R. Locke was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Gregory Grams, Dr. Brevard and Thomas F. Schoenberg. In his complaint he alleges that defendants Grams and Schoenberg were responsible for hot temperatures in his cell which made it difficult for him to breathe. He further alleges that Dr. Brevard denied him dental treatment which caused him pain.

On June 2, 2006 defendants 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 filed his briefing opposition to the motion on July 3, 2006. No further briefing is required.

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.

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' motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Brian R. Locke is an inmate at the Columbia Correctional Institution, Portage, Wisconsin (CCI). Defendant Gregory Grams is the Warden at CCI. Defendant Thomas Schoenberg is a lieutenant at CCI. Defendant Dr. Brevard is the dentist at CCI.

Cell Temperatures

Plaintiff was confined in the DS-2 unit from February 4, 2005 through July 19, 2005. THE DS2 cells are not climate controlled. They have ventilation by using two separate vents, one to exhaust interior cell air and another to continually supply fresh air. During hot weather the cell temperature is slightly higher than the

outside temperature. Between July 16 and July 18, 2005 temperatures in the DS-2 unit ranged from 82 to 90 degrees.

On July 16, 2005 the National Weather Service issued a heat advisory. During a heat advisory inmates are provided ice and cool water to drink in their cells. Cool showers are also provided. There is no record that plaintiff complained to correctional staff that he was having breathing problems due to the heat on July 16, 2006.

On July 17, a heat advisory was issued. On July 17, 2006 plaintiff was examined in the dayroom by Nurse Helgerson. He stated that the heat makes it hard for him to breathe sometimes. His examination was normal and he did not appear to be any acute distress. He requested a fan. Since Helgerson concluded that plaintiff was expressing discomfort from the heat he recommended obtaining a fan or moving him to the infirmary for 24 hours.

Defendant Schoenberg overrode Nurse Helgerson's request because it was not a medical order from a doctor. DS-2 inmates were not allowed to possess fans per CCI property policy because of security concerns.

Later on July 17, 2005 after consulting with a doctor Helgerson provided plaintiff with an inhaler and instructed him to use two puffs every 4-6 hours as needed for 60 days.

On July 18, 2005 defendant Grams received correspondence from plaintiff complaining of the heat and the lack of a fan. Grams

advised plaintiff that the fan must be determined by a doctor to be medically necessary.

On July 18, 2005 a nurse went to the unit to see plaintiff. He was agitated and refused the assessment. Plaintiff was transferred to the Divine Savior Hospital, Portage, Wisconsin on July 18, 2005 after he ingested 75 tablets of clonidine at about 9:15 a.m.

DENTAL TREATMENT

On May 22, 2005 plaintiff submitted a request to defendant Grams to transfer him to Dodge Correctional Institution to have three teeth pulled because of pain. On May 24, 2005 Dr. Bridgewater, CCI's internal medicine doctor prescribed naprosyn 200 milligrams, two tablets by mouth, twice per day as needed for tooth pain for plaintiff.

On May 27, 2005 Dr. Brevard extracted two of plaintiff's teeth. Plaintiff was prescribed pain medications post operatively.

On June 1, 2005 plaintiff wrote defendant Grams complaining of dental pain. Grams advised plaintiff to address his dental issue with Ms. Semrow, the Health Service Supervisor. On June 17, 2005 plaintiff sent a letter to Ms. Semrow indicating he wanted an annual dental exam and cleaning. He also indicated that he had two molars removed and that they had gotten infected. On June 22, 2005 Semrow advised plaintiff that she would refer his letter to Dr. Brevard.

On July 13, 2005 plaintiff wrote Semrow again requesting an exam and cleaning. She advised him that he was scheduled for an appointment. On July 27, 2005 plaintiff wrote Semrow requesting the name of the Dentist's supervisor. Semrow provided plaintiff this information.

Dr. Brevard could find no copy of a Dental Service request received from plaintiff for dental pain. The only complaint in the record from plaintiff was his complaint that he had not received his yearly exam and teeth cleaning in a timely manner.

MEMORANDUM

Plaintiff was allowed to proceed on his Eighth Amendment claims against the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Plaintiff claims that defendants Schoenberg and Grams were deliberately indifferent to his health and safety when they subjected him to hot cell temperatures from July 16-July 18, 2005. The Eighth Amendment prohibits cruel and unusual punishment. Wilson v. Seiter, 501 U.S. 294, 298 (1991). To prevail on an Eighth Amendment claim plaintiff must prove that the deprivation was sufficiently severe and that prison official acted with deliberate indifference. Hudson v. McMillan, 593 U.S. 1, 8 (1992).

Deliberate indifference is a subjective standard which requires that the defendant knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

To show that his deprivation was sufficiently severe to rise to the level of a violation plaintiff must show that he suffered physical harm or extreme and officially sanctioned psychological harm as a result of the heat. Doe v. Welborn, 110 F.3d 520, 524 (7th Cir. 1997). Although the temperatures were hot during the weekend of July 16-18, 2005, plaintiff was provided ice, cool water to drink and cool showers. On July 17, 2005 a nurse saw plaintiff because he was complaining of some discomfort from the heat. His exam was normal. Defendants did not allow plaintiff to have a fan because a doctor had not determined it to be medically necessary.

Plaintiff has not shown that he suffered any physical harm or psychological harm from the heat. Further, defendants were not deliberately indifferent to his concerns about the heat. He was provided accommodations for the heat and was seen by a nurse who concluded he was not in any acute distress. Defendants Schoenberg and Grams were not aware of facts from which the inference could be drawn that a substantial risk of serious harm to plaintiff existed.

Accordingly, defendants are entitled to judgment in their favor on this Eighth Amendment claim.

Plaintiff also claims that defendant Brevard was deliberately indifferent to his serious dental condition. Deliberate indifference of a serious medical need violates an inmate's Eighth Amendment rights. Estelle v. Gamble, 429 U.S. 97 (1976). Plaintiff must first show that he has a serious medical need and that the defendant acted with deliberate indifference to his condition.

There is no evidence in the record that plaintiff requested dental treatment from Dr. Brevard which was denied. Dr. Brevard extracted two infected molars from plaintiff and prescribed pain medication for him. Plaintiff has not shown that defendant Brevard was deliberately indifferent to any serious medical need. Accordingly, defendant Brevard is entitled to judgment in his favor on this claim. Defendants' motion for summary judgment will be granted.

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).

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ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 5th day of July, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ
District Judge