

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

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JOHNNY R. LACY,

Plaintiff,

v.

MEMORANDUM and ORDER

CINDY SAWINSKI, JOLINDA WATERMAN  
and LT. GERL,

06-C-284-S

Defendants.

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Plaintiff Johnny R. Lacy was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Cindy Sawinski, Jolinda Waterman and Lt. Gerl. In his complaint he alleges that the defendants were deliberately indifferent to his insulin dependent diabetes when they denied him thermal underwear.

On August 14, 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. This motion has been fully briefed and is ready for decision. On August 31, 2006 plaintiff moved for default and for a declaratory judgment.

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 Johnny R. Lacy is an inmate at the Wisconsin Secure Program Facility, Boscobel, Wisconsin (WSPF). He is an insulin dependent diabetic.

Defendant Joan Gerl is a security supervisor at WSPF. At all times material to this action defendant Jolinda Waterman was a registered nurse at WSPF. Defendant Cindy Sawinski is the Health Services Manager at WSPF.

On July 15, 2005 defendant Gerl was making her routine rounds of the Delta unit at WSPF where plaintiff was housed. Unit staff advised defendant Gerl that plaintiff had been placed on a paper gown restriction for damaging and misusing his state issued clothing. Because plaintiff claimed to have a medical order

allowing him to have his thermal underwear top and bottom, staff allowed him to keep the underwear. Plaintiff rejected the paper gown offered to him.

Defendant Gerl contacted defendant Waterman to ask whether it was medically necessary for plaintiff to have his thermal underwear while on paper gown restriction. Defendant Waterman discussed the situation with defendant Sawinski.

Defendant Sawinski thoroughly reviewed plaintiff's medical records and determined that plaintiff had a physician's order for thermal tops and bottoms valid for six months from November 12, 2003 through May 12, 2004. There was no physician's order for plaintiff to possess the thermal tops or bottoms in July 2005. She further determined that plaintiff was not being exposed to cold weather and had blankets in his cell if he became cold. Defendant Sawinski approved the removal of plaintiff's thermal underwear while he was on the paper gown restriction.

Lacy was informed that his thermal underwear would be removed while he was on paper gown restriction. He was further advised that the underwear would be returned to him when the physician determined that it was medically necessary.

#### MEMORANDUM

Plaintiff was allowed to proceed on his Eighth Amendment deliberate indifference claim 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. Although in his opposition brief and motions plaintiff refers to an Eighth Amendment claim that he was deprived the basic necessities of life, he was not allowed to proceed on this claim. In addition there is no evidence to support this claim.

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.

Plaintiff may have a serious medical need because he is an insulin dependent diabetic. Defendants treated his condition. For six months during the winter the physician ordered that he have thermal underwear to protect him from the cold. In July 2005 there was no such order. Plaintiff was not exposed to cold weather in July and had blankets in his cell if he became cold. Defendants were not deliberately indifferent to plaintiff's diabetes.

Defendants did not deny plaintiff's Eighth Amendment rights. Accordingly, they are entitled to judgment in their favor as a matter of law. Their motion for summary judgment will be granted. Plaintiff's motion for default and a declaratory judgment will be denied.

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 (7<sup>th</sup> Cir. 1997).

ORDER

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

IT IS FURTHER ORDERED that plaintiff's motions for declaratory judgment and default are DENIED.

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 12<sup>th</sup> day of September, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge