

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

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RUSSEL L. SINGLETARY,

Plaintiff,

v.

OPINION AND ORDER

06-C-323-C

JAMES W. REED, M.D.  
CHIEF MEDICAL DIRECTOR  
FCI OXFORD  
OXFORD, WISCONSIN,

Defendant.  
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The question in this prisoner civil rights case under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), is whether defendant James Reed denied plaintiff Russel Singletary's Eighth Amendment rights by refusing to provide adequate medical care. Defendant's motion for summary judgment is now ripe for review.

Plaintiff alleges that defendant confiscated his medication in June 2004 and failed to prescribe necessary treatment in April 2004 and July 2004 for various rectal problems from which plaintiff was suffering. Because I conclude that plaintiff has raised a genuine dispute whether defendant was deliberately indifferent to a serious medical need when he refused

to treat plaintiff in July 2004, I will deny defendant's motion in part. However, plaintiff failed to adduce any evidence that defendant was aware in April 2004 that plaintiff needed additional treatment or that he was in any way involved in the confiscation of his medication in June 2004. Accordingly, I will grant defendant's motion with respect to those events.

From the parties' proposed findings of fact and the record, I find the following facts to be undisputed.

#### UNDISPUTED FACTS

Plaintiff Russel Singletary is a prisoner at the Federal Correctional Institution in Oxford, Wisconsin. Defendant James W. Reed was the clinical director at the prison.

Plaintiff met with defendant on October 7, 2003, at which time defendant renewed plaintiff's prescription for hemorrhoidal suppositories. In January 2004, defendant told plaintiff that he was scheduled to receive a proctosigmoidoscopy, which is an inspection of the rectum. (Neither party proposed facts explaining when and why plaintiff's treatment began or how a decision was reached to perform the rectal inspection.) In addition to prescribing more suppositories, defendant prescribed Tylenol for pain.

On March 17, 2004, Mohammad Aslam, another doctor at the prison, performed a proctosigmoidoscopy on plaintiff. The examination revealed Singletary had a rectal-sigmoid polyp, moderate internal hemorrhoids, and a posterioranal fissure. As a result, Aslam

ordered a colonoscopy and a polypectomy.

On April 7, 2004, defendant met with plaintiff after plaintiff submitted a sick call request. Plaintiff requested a renewal of his blood pressure medication and told defendant he was experiencing “a lot of stress.” In addition, plaintiff asked defendant when his “surgery” was scheduled, but he did not complain about any symptoms related to rectal problems. Defendant wrote plaintiff renewal prescriptions for his “chronic care medications.”

Defendant saw plaintiff again on April 23. Defendant prescribed amitriptyline for lower back pain. Defendant did not prescribe any medications for rectal problems.

All of plaintiff’s medications were discarded on June 9, 2004.

On June 15, 2004, plaintiff received a colonoscopy at Mercy Medical Hospital in OshKosh, Wisconsin. The doctor removed the polyp and diagnosed plaintiff with diverticulitis. The doctor’s discharge instructions, which defendant read, did not include any medication prescriptions. (Plaintiff objects to this fact on the ground that he does not remember receiving the discharge instructions. However, even if plaintiff never saw the instructions, this does not call their accuracy into question.) According to the biopsy report, the polyp was non-cancerous.

When plaintiff returned to the prison, he did not voice any complaints to defendant.

On July 14 or 15, defendant renewed plaintiff’s high blood pressure medications.

(The parties dispute whether plaintiff complained to defendant that “his bowel movement was proceeded by pus” and whether defendant refused plaintiff’s requests for antibiotics, pain medication and a stool softener.)

On October 3, 2004, plaintiff complained to defendant about painful hemorrhoids that were causing bleeding during bowel movements. In addition, plaintiff continued to experience “a continuous discharge of pus.” A physician’s assistant performed a rectal examination that revealed a hemorrhoid. Plaintiff received a prescription for hemorrhoidal rectal suppositories.

On December 20, 2004, plaintiff told a physician assistant about a painful lesion on his buttocks. The physician assistant observed “spontaneous drainage from a sinus tract located at the perianal area as well as a mild enlargement of [the] prostate without nodules”; he prescribed an antibiotic for an infection in the perianal area. In January 2005, the physician assistant requested a consultation with a surgeon, which occurred on March 2, 2005. The surgeon recommended a rectal fistulotomy to remove the infected lesion. On the same day, defendant placed a consult for the surgery.

On August 9, 2005, plaintiff received the surgery at Columbus Community Hospital. (Defendant included additional proposed findings of fact about plaintiff’s treatment after this surgery. I have not considered those facts because plaintiff did include any allegations in his complaint about treatment after the August 2005 surgery.)

## OPINION

Plaintiff's claim that defendant denied him adequate medical care arises under the Eighth Amendment, which prohibits cruel and unusual punishment. Under the Eighth Amendment, a prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir.2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir.1998), if it causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir.1996), or if otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.1997).

Thus, under this standard, plaintiff's claim has three elements:

- (1) Did plaintiff need medical treatment?
- (2) Did defendants know that petitioner needed treatment?
- (3) Despite their awareness of the need, did defendants fail to take reasonable

measures to provide the necessary treatment?

Because plaintiff would have the burden to prove his case at trial, it is his burden at the summary judgment stage to come forward with enough evidence on each of these elements to allow a reasonable jury to find in his favor. Borello v. Allison, 446 F.3d 742, 748 (7th Cir. 2006); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986).

The scope of plaintiff's claim is not entirely clear, but as I understand it, the claim arises from three events: (1) defendant's failure on April 23, 2004 to prescribe medication for his rectal problems; (2) the confiscation of his medication in June 2004; and (3) defendant's alleged refusal in July 2004 to provide treatment to plaintiff when he complained that pus was seeping from his rectum. (To the extent plaintiff intended to blame defendant for later treatment decisions, he could not prevail because there are no facts showing that defendant was personally involved in those decisions, with the exception of his referral of plaintiff for treatment to other health care providers. Such treatment could not meet the standard for an Eighth Amendment violation. In other instances, plaintiff finds fault with other medical care providers, such as the doctor who performed his colonoscopy. I have not considered those allegations because Dr. Reed is the sole defendant in this case.)

The first event (failure to prescribe medications on April 23) cannot give rise to liability under the Eighth Amendment because plaintiff adduces no evidence to satisfy the second element of his claim, which is whether defendant was aware that plaintiff needed

medication for rectal problems. Plaintiff's only reference to this incident is in his response to defendant's proposed findings of fact, in which he says that one of the reasons he went to sick call on April 23 was that the pain medication he was then taking "did nothing [to] relieve the pain associated with the bleeding and burning [from the] posterior anal fissure diagnosed on March 17,2004." Dkt. # 23, at ¶10. Even if I assume that this statement would be enough to show that plaintiff had a serious medical need on April 23, plaintiff does not say in his proposed findings of fact or in his affidavit that he ever told defendant at any time before his June 2004 colonoscopy that he was experiencing pain or bleeding in his rectum. The grievance that plaintiff cites in support of his version of the fact includes nothing about rectal problems, but instead raises an issue about renewal of his amitriptyline prescription. If defendant was not aware of a problem, he cannot be held liable for it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Similarly, plaintiff points to no evidence that defendant knew or was in any way involved in the confiscation of plaintiff's medications in June 2004. In his affidavit, plaintiff uses the passive voice in discussing this event: "On June 9, 2004, Plaintiff was placed in the hold and all prescribed medications dis[c]arded." Dkt. #24, at ¶15. Notably, plaintiff makes no reference to defendant. Even if it is true that defendant was the supervisor of another staff member who took away plaintiff's medication, this would not be enough to hold defendant liable. Plaintiff must show that defendant was "personally involved" in, or

caused, the violation of his rights. Gossmeyer v. McDonald, 128 F.3d 481, 494 (7th Cir. 1997) (applying personal involvement requirement to Bivens action); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994) (same).

In his response to defendant's proposed findings of fact, plaintiff says that "Dr. Reed and his medical staff" confiscated and then discarded his medications. Plaintiff swears under penalty of perjury that the statements in his proposed findings of fact are true, so I may treat that document as if it were an affidavit. Nevertheless, this conclusory allegation is not enough to raise a genuine dispute whether defendant was responsible for the loss of plaintiff's medication. The Federal Rules of Civil Procedure require a non-moving party to set forth "specific facts" showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). Although a plaintiff may make general allegations in his complaint, Federal Rule of Civil Procedure 56 "requires affidavits that cite specific concrete facts establishing the existence of the truth of the matter asserted." Drake v. Minnesota Mining & Manufacturing Co., 134 F.3d 878, 887 (7th Cir. 1998); see also Lujan v. National Wildlife Federation, 497 U.S. 871, 888 (1990) ("The object of [summary judgment] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit.")

Further, plaintiff's allegation is insufficient because he does not say how he knows that defendant was involved. Rule 56 requires that all affidavits be made on the basis of "personal knowledge." In other words, a party may testify about what he observed himself;

he may not speculate about what might have or could have happened. Fed. R. Civ. P. 56(e); Collins v. Seeman, 462 F.3d 757, 760 (7th Cir. 2006).

Plaintiff does not allege that defendant personally confiscated or destroyed his medications or that he directed other staff to do so. In fact, he provides no facts indicating why he believes defendant is responsible for his lost medication. Rather, it appears that plaintiff does not know who is responsible. In his grievance on this issue, plaintiff alleged that his medications were taken from his cell while he was in isolation. Dkt. #24, at Exh. 7. If plaintiff did not know who ordered the confiscation, the proper course of action was to direct discovery requests to defendant to determine whether he was involved. Apparently, plaintiff never did this. In any event, plaintiff cannot hold defendant liable for taking his medication when there is no evidence that defendant caused the deprivation.

With respect to the third event (defendant's alleged refusal to treat plaintiff after he told defendant that pus was seeping out of his rectum), I conclude that summary judgment is not appropriate. The symptom plaintiff described would be alarming for anyone who was experiencing it; the presence of pus seeping from the rectum suggests a potentially serious infection. Although plaintiff does not present expert testimony on the question whether such a condition is a serious medical need, "we need not check our common sense at the door. A delay in providing antibiotics will necessarily delay the curing of the infection or possibly lead to its spread." Gil v. Reed, 381 F.3d 649, 662 (7th Cir. 2004). See also Board

v. Farnham, 394 F.3d 469, 480 (7th Cir. 2005) (noting dangers of untreated infections). Particularly because plaintiff experienced this symptom soon after a colonoscopy and had a history of hemorrhoids and related problems, a reasonable jury could find that plaintiff's need for treatment was obvious. Johnson, 444 F.3d at 584-85 (even if doctor did not conclude that treatment was necessary, condition is serious medical need if need for treatment would be obvious to lay person). Further, plaintiff's symptom is at least as serious as other conditions for which the court of appeals has held or assumed could be sufficient to trigger Eighth Amendment protections. O'Malley v. Litscher, 465 F.3d 799, 805 (7th Cir. 2006) (minor burns resulting from lying in vomit); Greeno, 414 F.3d at 649-51 (heartburn and vomiting).

With respect to defendant's awareness, he denies that plaintiff complained about complications related to his colonoscopy at the July 2004 meeting. And there are reasons to doubt plaintiff's allegations to the contrary, most notably plaintiff's failure to complain to defendant again about his symptoms until almost three months later. Nevertheless, at the summary judgment stage, I may not make credibility determinations, even if one party's story seems implausible; only the finder of fact may decide which party is telling the truth. Washington v. Haupert, 481 F.3d 543, 550 (7th Cir. 2007). Further, it is undisputed that defendant knew that plaintiff had significant problems involving his rectum requiring two procedures over the course of a few months. If a jury believes plaintiff that he told

defendant about his symptoms one month after the colonoscopy, it could find reasonably that defendant was aware that plaintiff needed treatment for a possible infection.

Finally, with respect to the third element (whether defendant responded reasonably), it is undisputed that defendant provided no treatment in July 2004 to plaintiff related to his rectal problems. Of course, defendant says the reason for this is that he was not aware of any problems. However, if a jury believes plaintiff that defendant was aware, it could conclude also that simply refusing to provide plaintiff with treatment was not a reasonable response. Cavalieri v. Shepard, 321 F.3d 616, 626 n.1 (7th Cir. 2003).

In short, because a reasonable jury could find that defendant was deliberately indifferent to a serious medical need of plaintiff's, I will deny defendant's motion for summary judgment with respect to defendant's alleged refusal to treat plaintiff in July 2005. The motion will be granted in all other respects.

#### ORDER

IT IS ORDERED that defendant James Reed's motion for summary judgment is DENIED with respect to plaintiff Russel Singletary's claim that defendant refused to treat

his rectal problems in July 2005. In all other respects, the motion is GRANTED.

Entered this 21st day of May, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge