

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

KEITH A. JACKSON,
Plaintiff,

v.

MEMORANDUM and ORDER

DEBBIE HORVATH, DODGE COUNTY JAIL
ADMINISTRATOR and DANE COUNTY JAIL
ADMINISTRATOR,
Defendants.

07-C-198-S

Plaintiff Keith A. Jackson commenced this action under 42 U.S.C. §1983 against Debbie Horvath, Dodge County Jail Administrator and Dane County Jail Administrator. In his complaint he alleges that while he was at the Dodge County Jail he was given the wrong medications by Debbie Horvath and he became ill.

On June 7, 2007 defendants Dodge County Jail Administrator and Dane County Jail Administrator moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. This motion has been fully briefed and is ready for decision. Defendant Horvath has not been served with a summons and complaint in this action.

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).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

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

Plaintiff is currently an inmate at the Dane County Jail. Michael Plumer is the Dane County Jail Administrator. Maureen Soblewski is the Dodge County Jail Administrator. Debbie Horvath

is an employee of Health Professionals, Ltd. (HPL) and works as the Nursing Supervisor at the Dodge County Jail.

Plaintiff was transferred from the Dane County Jail to the Dodge County Jail on September 26, 2006 where he was temporarily housed until November 13, 2006. During this time plaintiff was prescribed Omeprazole and Atarax. HPL is responsible for the administration and delivery of prescription medications to Dodge County Jail inmates.

On or about October 3, 2006 Horvath distributed prescribed medications to the pod in which plaintiff was housed. Plaintiff took his medications.

At lunch time he reported feeling ill with nausea and light-headedness. Horvath interviewed him and placed in a medical cell. Plaintiff then reported that he felt better and was permitted to return to the lunch area and then to his own cell.

MEMORANDUM

Defendant Jail Administrators move for judgment in their favor based on their lack of personal involvement in giving plaintiff medications. It is undisputed that neither of the Jail Administrators, Maureen Soblewski or Michael Plumer, gave plaintiff medication. Defendant Jail Administrators are entitled to judgment in their favor as a matter of law because they did not participate

in the alleged constitutional violation. Vance v. Peters, 97, F.3d. 987, 991 (7th Cir., 1996).

Although plaintiff has not served defendant Horvath the Court will address the merits of plaintiff's claim against her. Deliberate indifference of an inmate's serious medical need states a cause of action under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97 (1976). Plaintiff has presented no evidence that Horvath gave him the wrong medication or that it caused him any serious medical condition. Plaintiff would not prevail on an Eighth Amendment claim against defendant Horvath. Since she has not been served, plaintiff's complaint against her will be dismissed without prejudice.

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 claim 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 by defendants Dodge County Jail Administrator and Dane County Jail Administrator is GRANTED.

IT IS FURTHER ORDERED that defendant Debbie Horvath will be dismissed without prejudice because she has not been served with the summons and complaint in this action.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint against defendants Dodge County Jail Administrator and Dane County Jail Administrator with prejudice and against Debbie Horvath without prejudice.

Entered this 6th day of July, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge