

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

LARRY BRACEY,

Plaintiff,

v.

JAMES GRONDIN, C.O. HUNT,
THOMAS TAYLOR, C.O. MURRAY,
C.O. KOELLER and JOLINDA WATERMAN,

Defendants.

OPINION AND ORDER

10-cv-287-bbc

In this civil action, plaintiff Larry Bracey, a prisoner at the Wisconsin Secure Program Facility, is proceeding on claims that defendants James Grondin, C.O. Hunt, Thomas Taylor, C.O. Murray, C.O. Koeller and Jolinda Waterman violated his rights under the Constitution and state law. Now before the court is defendants' motion for summary judgment. Dkt. #36.

After reviewing the parties' arguments and the evidence in the record, I conclude that defendants' motion must be granted in part and denied in part. I conclude that defendants' motion must be denied with respect to plaintiff's claims that defendants Grondin, Hunt and Taylor used excessive force against plaintiff when they were transferring him to a holding cell

and that defendants Grondin, Hunt, Taylor and Murray used excessive force against plaintiff when they were returning him to his cell after a cell search. There are too many material facts in dispute related to the reasonableness and necessity of the force used by defendants. However, plaintiff has adduced no evidence that defendant Koeller used excessive force against him during these incidents or that this defendant had a reasonable chance to prevent the others from using force. Thus, I will grant defendants' motion with respect to defendant Koeller.

Also, I will grant defendants' motion as it relates to plaintiff's claim that defendant Waterman violated his Eighth Amendment rights by failing to provide him adequate medical treatment. There is no evidence in the record from which a jury could conclude that Waterman was deliberately indifferent to any serious medical need of plaintiff's.

Finally, I will grant defendants' motion for summary judgment with respect to plaintiff's state law claims because it is undisputed that plaintiff did not file the proper notice of claim required by Wisconsin law.

From the defendants' proposed findings of fact and plaintiff's responses, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

Plaintiff is a state prisoner housed at the Wisconsin Secure Program Facility located

in Boscobel, Wisconsin. Defendants Eric Hunt, Calvin Koeller, Thomas Taylor and Jennifer Murray are correctional officers at the facility. Defendant James Grondin is a supervising officer and defendant Jolinda Waterman is a nurse clinician at the facility.

On July 29, 2005, at approximately 2:53 p.m., defendants Hunt, Koeller and Taylor went to plaintiff's cell. Taylor told plaintiff that he was being removed from his cell for a random cell search and plaintiff responded that the cell search was harassment because his cell had been searched that month. Taylor ordered plaintiff to comply with his removal, but plaintiff refused, asking to see a supervising officer. Taylor left and told Sergeant Laxton about the situation. Laxton went to plaintiff's cell front and asked him whether he was going to comply with Taylor's order. Plaintiff refused to comply with the order. (Defendants say that at this point, plaintiff threatened to stab staff. Plaintiff denies threatening to do so.) At approximately 3:00 p.m., Laxton notified defendant Grondin that plaintiff was refusing to come out of his cell. When Grondin arrived on the unit, he was informed that an officer had recently written a conduct report, charging plaintiff with threats, disrespect and soliciting staff, and that a letter in plaintiff's cell would corroborate the allegations. This is what had led to the decision by the unit sergeant to conduct the cell search.

Defendant Grondin went to plaintiff's cell and talked with him. Plaintiff said, among other things, that his cell had been searched about five days earlier and that he was sick of staff "harassing" him. Grondin told plaintiff that an inmate's cell could be searched at any

time, so whether the cell had been searched five days earlier was irrelevant. Grondin asked plaintiff whether he would comply with the order to be removed from his cell. Plaintiff refused. (Defendant states that plaintiff threatened that the “disciples” were going to kill staff. Plaintiff denies making any threats except saying that he was going to take legal action for harassment.) Eventually, plaintiff agreed to comply and allowed officers to place hand and leg restraints on him. He was then escorted to the holding cell by Hunt, Taylor and Koeller.

At the holding cell, a tether strap was applied to plaintiff’s hands. Hunt instructed plaintiff to kneel and his leg restraints were removed. Taylor instructed plaintiff to step into the holding cell and the door was secured behind him. Taylor then instructed plaintiff to place both his hands outside the trap. Plaintiff complied and Taylor removed the cuff from plaintiff’s right hand.

(The parties dispute what happened next. Defendants say that plaintiff pulled his right hand inside the trap and asked “What are you going to do now?” Defendants say that defendant Taylor ordered plaintiff to place both hands outside the trap and turn so that his back faced the cell door, but plaintiff refused, turning around and stating, “Try to take it off now,” “I’ll kill you” and “[you are] going to get killed by the disciples.” After plaintiff refused to comply with several more orders to turn around and place both hands outside the trap, defendant Grondin told the officers to pull plaintiff’s tethered arm out of the trap,

secure it and remove the remaining restraints. Hunt and Taylor pulled plaintiff's arm out of the trap, removed the remaining restraints and secured the trap.

Plaintiff admits that he pulled his right hand into the cell and refused several orders to turn around and place his hand outside of the trap, but denies making any threatening statements to defendants and avers that he kept his left hand outside of the trap so that the officers could remove the restraints on it. Plaintiff says that Grondin told defendants Hunt and Taylor to "use force" to remove the left handcuff. In response to Grondin's orders, Hunt and Taylor "violently yanked" and twisted plaintiff's left arm out of the trap up to his shoulder and neck. The top of the trap door cut the top of plaintiff's forearm, leaving a gash that was 1/2 inch x 6-7 inches. Defendants continued to twist plaintiff's arm and wrist to the point that he thought it was going to break. They did not stop until he shouted at them to do so.)

Once the restraints were removed and plaintiff was secured in the holding cell, the escorting officers went to plaintiff's cell to assist with the cell search. Defendant Grondin remained at the holding cell and talked with plaintiff. He noticed that plaintiff appeared to have a scrape on his forearm. Grondin notified the health service unit and defendant nurse Jolinda Waterman arrived a few minutes later to examine plaintiff's arm.

Defendant Waterman stood in front of the holding cell to examine plaintiff. Plaintiff's speech was clear and he demonstrated a full range of motion on his wrist and

forearm. (The parties dispute the extent of plaintiff's injuries. Defendant Waterman avers that plaintiff had a "superficial" abrasion approximately 1/2 inch x 6-7 inches on his left post forearm, but no bruising or swelling and that the area was dry with dried blood on the skin. Waterman also noted reddened indentations on plaintiff's wrists from the restraints. Defendants also say that plaintiff denied having any pain. Plaintiff, on the other hand, states that his arm was bleeding and that he told Waterman he was in pain.) Plaintiff was told that nurse Waterman would clean and treat his arm when he returned to his own cell.

When officers had completed the cell search, defendants Koeller, Hunt and Taylor returned to the holding cell and applied restraints to plaintiff to return him to his cell. Defendant Grondin and Sergeant Laxton decided that a support officer should be used to help escort plaintiff back to his cell, and defendant Murray was radioed to report to the unit. Upon Murray's arrival, Sergeant Laxton told her that plaintiff had been pulled out of his cell for a cell search and was resistive and non-compliant with staff while at the holding cell. Laxton told Murray that staff should use "compliance holds" to secure plaintiff. Murray then proceeded to the holding cell.

Plaintiff was instructed to back out of the cell and to remain facing forward. He complied with all orders during the application of the restraints and removal from the cell. Plaintiff was then assisted to his feet and escorted back to his cell, with defendant Murray following behind him. (Defendants say that Taylor and Hunt gave plaintiff several orders

to face forward during the escort because he was moving his head around. Plaintiff denies that he was moving his head or that he received orders to stop.)

Once at his cell, plaintiff was tethered to the cell door so that his restraints could be removed. He was directed to kneel for removal of the leg restraints. During removal of the leg restraints, plaintiff turned his head in defendant Grondin's direction and asked why certain of his property had been taken. Defendants Hunt and Taylor told plaintiff to face forward and not turn his head. Plaintiff said, "I'm talking to Lietenant Grondin."

The parties dispute what happened next. Defendants state that at this point, plaintiff turned towards Grondin again, who told plaintiff to face forward and said that he would talk to plaintiff after he was secured in the cell. According to defendants, plaintiff started yelling at staff and turning his head and shoulders in an aggressive manner. Hunt "perceived [plaintiff's] action as a threat" and "directed [plaintiff] to the wall in a controlled manner." Dfts.' PFOF ¶¶ 79-81, dkt. #38. At the wall, plaintiff moved around and tried to break free of Hunt. Defendant Taylor then "directed [plaintiff] to the floor in a controlled manner by controlling his decent and stabilizing his head." Id. ¶ 83. Plaintiff was given several direct orders to comply and stop resisting staff. He refused. While plaintiff was on the floor, Taylor secured plaintiff's hand and put pressure to his wrist to try to gain compliance. Murray secured plaintiff's leg, which at that time had been out of the leg restraint. Grondin activated the alarm on his radio for assistance. When the team arrived, the officers had

plaintiff under control and the leg restraints reapplied. Hunt asked plaintiff whether he was okay and plaintiff did not respond.

According to plaintiff, as soon as he said he was talking to Grondin, defendant Hunt “rammed” plaintiff’s head into the steel door frame with significant force, leaving plaintiff barely conscious and in severe pain. Plaintiff says that at that point, he was not acting aggressively or threateningly and was still handcuffed, tethered, shackled and on his knees. Plaintiff disagrees that defendants “directed him to the wall in a controlled manner.” Instead, plaintiff says, Hunt punched plaintiff in the face, Grondin “knee-dropp[ed]” him in the side, Murray scratched and pinched his left leg, drawing blood, and Taylor dragged plaintiff by the handcuffs into the cell.

At some point, plaintiff was pulled to his feet. He saw that his glasses were on the floor. (Defendants say that plaintiff began demanding his glasses, became “resistive” to staff and tried to break away from the officers, resulting in his once again being “directed towards the wall in a controlled manner.” Plaintiff disagrees with defendants’ version of events, stating that he was not resistive or combative, but merely requested his glasses. In response, defendants rammed his face into the concrete wall.)

After a few minutes, Grondin decided that they had the situation under control and released the response team. Plaintiff was escorted by defendants Hunt and Taylor to Alpha Unit to be placed in control status. During the escort, Taylor noticed that Hunt had blood

on the front of his uniform. In addition, defendant Murray reported that it was possible that she had had significant exposure to plaintiff's blood.

Defendant Waterman watched plaintiff being escorted to Alpha Unit. (Defendant Waterman avers that plaintiff was walking without difficulty and that she saw no apparent injuries other than to his left forearm. Plaintiff disputes this, stating that he was bleeding from his mouth and leg and had a swollen welt on the left side of his face.)

On the Alpha Unit, plaintiff was placed in a holding cell. All restraints were removed and he was secured in the holding cell. Plaintiff complied with all orders relevant to his placement into control status. (The parties dispute whether plaintiff was yelling and making threatening statements at staff during this time.) Defendant Waterman came to the holding cell to see plaintiff. Waterman cleansed his left forearm and noted that the arm had begun scabbing. (The parties dispute whether plaintiff complained to Waterman about other injuries. Defendants say that plaintiff did not tell Waterman that he had any facial or head injuries and did not tell Waterman he had been kneed in the kidneys by staff. Plaintiff avers in his affidavit that he told Waterman that defendants had beaten him, ran his head into the door and wall, punched him, kneed him, scratched him and that he was in pain all over. Plaintiff says that he asked Waterman to take pictures of his injuries.)

Later that day, defendant Waterman received a call from Alpha Unit staff, who told her that plaintiff did not want to be seen by health services unit staff, but that he was

requesting acetaminophen for a sore shoulder and neck. Waterman told unit staff to give plaintiff the medication.

At approximately 6:30 p.m., defendant Waterman received a call from Alpha Unit staff, informing her that plaintiff was complaining of a bump on his head and was asking to see a nurse. Waterman went to plaintiff's cell. (The parties dispute whether she went immediately or waited two hours.) She noted that plaintiff's speech was clear and that he followed directions without problems. Upon examination, Waterman found a swollen area of red and blue hematoma. (Defendants state that the area was "quarter sized," while plaintiff says he had a lump the size of an egg.) The skin was intact and there was no laceration or abrasion. Waterman also noted no redness or swelling on plaintiff's left lateral side, but that the area was "tender to palpation." Waterman told plaintiff he may have muscle bruising and he became agitated, stating that an officer pushed his head into the door and that another officer punched him in the face. He also complained of a sore neck and pain all over. Waterman told plaintiff that there was no redness or marks on his left cheek, though there was some tenderness in plaintiff's neck. When Waterman told plaintiff that she found no significant injuries, he said something to the effect of, "you better write everything down, I'm filing a lawsuit. I see what you're doing. You're a murdering mother fucking punk-ass bitch." (Plaintiff avers that he also told Waterman to take pictures of his injuries and that he wanted to see the video of the events.) Waterman told plaintiff that he

could have more Tylenol in two hours. Plaintiff continued to yell and swear at Waterman and she terminated the assessment.

On July 30, defendant Waterman went to plaintiff's cell in response to plaintiff's complaints of a sore neck and left lower back tenderness. Plaintiff was very loud, yelling and swearing at her. Plaintiff was flailing his arms, walking around his cell and moving his head side-to-side and forward. Plaintiff continued to swear and yell and was unreceptive to Waterman's offer of pain medication and an ice pack. Waterman left.

On July 31, defendant Waterman saw plaintiff again at his cell front, in response to complaints about a sore neck and back pain. Plaintiff moved to the cell front, then turned and walked to the back of the cell, and then turned and bent over, stood up and returned to the cell front. When Waterman asked plaintiff to turn his light on so she could speak with him, he did so reluctantly. Plaintiff started yelling and swearing, asking for his glasses and reporting that both pairs were in the health service unit. Waterman told plaintiff that she would check on the matter. Waterman asked plaintiff where his pain was, and plaintiff indicated that he had pain in his cervical area, across the back of his shoulder and in his left lower hip and side. Defendant Waterman gave plaintiff an ice pack and instructed him to ice the areas for 20 minutes at a time. She told plaintiff to continue using acetaminophen.

Plaintiff was seen later that day by health service unit staff in the exam room on the unit for complaints of pain in his left shoulder, scapula, left flank and left leg areas. He told

staff that an officer had kneed him in the kidney “the other night.” Staff told plaintiff to notify the health service unit if his symptoms worsened.

On August 1, health service staff went to plaintiff’s cell front in response to plaintiff’s request for pictures to be taken of his injuries. Plaintiff showed the staff two swollen abrasions on his left leg and an abrasion on his left arm near his elbow. Staff refused to take pictures and told plaintiff to fill out a health service request.

OPINION

A. Excessive Force

Plaintiff contends that defendants Grondin, Hunt, Koeller and Taylor used excessive force to pull his left arm out of the trap door of the holding cell before removing the handcuff, and that he received a gash on his arm as a result. Additionally, plaintiff contends that Grondin, Hunt, Koeller, Murray and Taylor used excessive force against him when returning him to his cell after the cell search.

To determine whether a prison official’s use of force on a prisoner was “excessive” in violation of the Eighth Amendment, a court must determine “whether [the] force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically for the very purpose of causing harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The factors relevant to making this

determination include:

- ▶ the need for the application of force;
- ▶ the relationship between the need and the amount of force that was used;
- ▶ the extent of injury inflicted;
- ▶ the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them; and
- ▶ any efforts made to temper the severity of a forceful response.

Whitley, 475 U.S. at 521.

Defendants make two primary arguments in support of their motion for summary judgment on this claim. First, they contend that their use of force was reasonable and designed to gain compliance from plaintiff. Thus, the force could not be found to be malicious and sadistic or for the very purpose of hurting plaintiff. Defendants focus on the fact that plaintiff had refused to cooperate with his cell search, refused to follow orders at the holding cell and then, when he was brought back to his cell, refused to follow orders and face forward. Thus, defendants argue, because it is undisputed that plaintiff was being combative and difficult, a jury could conclude only that defendants used force solely “in a good-faith effort to maintain or restore discipline.” Defendants’ second argument is that the force they used against plaintiff was de minimis, as evidenced by plaintiff’s lack of serious injuries.

There is ample evidence in the record to support defendants’ argument that they used

force only after plaintiff refused to cooperate and created a security risk. At the holding cell, plaintiff removed his uncuffed right hand from the cell trap door and turned around to face staff before they could uncuff his left hand. He refused several direct orders to turn away from staff and place his free hand back outside the trap door so his left hand could be uncuffed. Plaintiff's actions created a security risk, because, as plaintiff concedes, he could have reached out of the trap with his right hand and grabbed or hit defendants, or he could have used the restraints as a weapon. Later, when he was being returned to his own cell, plaintiff refused to face forward, raising a legitimate concern that he intended to spit on or assault one of his escorting officers.

However, if a jury were to believe plaintiff's version of events, the jury could conclude that defendants' use of force was disproportionate to the situation, that defendants made no efforts to temper the severity of the force and that defendants intended to harm plaintiff. According to plaintiff, when he was being transferred to the holding cell, defendant Grondin instructed the officers to "use force" to pull plaintiff's tethered arm out of the trap door. The officers responded by yanking plaintiff's arm through the door and then twisting and bending it to the point that plaintiff felt as if his arm were going to break. Defendants did not stop bending and twisting plaintiff's arm until he shouted at them that it was going to break. Although defendants were justified in using some force to gain plaintiff's compliance and remove the handcuffs safely, a jury could conclude that it was unreasonable for

defendants to violently bend and twist plaintiff's arm.

According to plaintiff's description of the incident that occurred when he was being escorted back to his own cell, he was kneeling on the ground in handcuffs and leg restraints and surrounded by at least five officers when defendant Hunt slammed his head into the wall. Although plaintiff was disobeying orders by turning around to talk to defendant Grondin, a jury could conclude that it was not necessary to slam plaintiff's head into the wall to gain compliance. Additionally, plaintiff avers that after Hunt slammed plaintiff's head into the wall, he was dizzy, disoriented and was not resisting defendants' orders. Nonetheless, defendant Hunt punched plaintiff in the face, defendant Grondin kned him in the back, defendant Murray scratched and pinched his legs and defendant Taylor dragged him into the cell by his handcuffs. While being taken to segregation immediately after this, plaintiff avers, he told defendants that he needed his glasses on the floor and defendants responded by ramming plaintiff into the concrete wall of the hallway. If a jury believed plaintiff's version of events, it could conclude that the actions by Hunt, Grondin, Murray and Taylor were malicious and sadistic and unreasonable under the circumstances.

Finally, although defendants contend that plaintiff's lack of injuries proves that their use of force was de minimis, it is disputed whether plaintiff received any injuries from the incident. Plaintiff says that as a result of the force, he received a lump on his head the size of an egg, a severe headache, neck pain, scratches and bruises, a gash on his arm and a

swollen arm and hand. Moreover, even if none of these injuries was serious, a jury could still conclude that defendants used excessive force against plaintiff. As the Supreme Court has explained, “[a]n inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury.” Wilkins v. Gaddy, 130 S. Ct. 1175, 1178-79 (2010). The ultimate question is whether defendants’ use of force was malicious and sadistic, rather than a good-faith effort to gain plaintiff’s compliance. Many genuine disputes of material fact will have to be resolved before this question can be answered. Therefore, I will deny defendants’ motion to dismiss plaintiff’s claims with respect to defendants Hunt, Grondin, Murray and Taylor.

However, I will grant defendants’ motion as it relates to defendant Koeller. Plaintiff concedes that Koeller was not involved in the application of force, but argues that Koeller is liable because he was present during the incidents and failed to intervene to protect plaintiff from the other defendants. Plt.’s Br., dkt. #59, at 10. A prison official may be liable under § 1983 for failing to intervene to stop a constitutional violation committed by another prison official. Miller v. Smith, 220 F.3d 491, 495 (7th Cir. 2000). Although § 1983 requires personal responsibility for a constitutional violation, that requirement is satisfied whenever an official “acts or *fails* to act with a deliberate or reckless disregard of the plaintiff’s constitutional rights.” Id. (quoting Crowder v. Lash, 687 F.2d 996, 1005 (7th Cir. 1982)) (emphasis in original). When an official has a “realistic opportunity to step forward

and prevent” a constitutional violation, he may be held liable for failure to do so. Miller, 220 F.3d at 495.

The problem for plaintiff’s failure to intervene claim is that no reasonable jury could conclude that defendant Koeller had a realistic opportunity to prevent the other defendants from using excessive force against plaintiff. Plaintiff describes the events as happening without warning, one after another and over a short time period. Even if a jury believed plaintiff’s description of the events, plaintiff has provided no basis for a jury to conclude that defendant Koeller could have stepped forward and prevented the other defendants from using force. Therefore, defendant Koeller is entitled to summary judgment on plaintiff’s claim against him.

B. Medical Care

The Eighth Amendment requires the government “to provide medical care for those whom it is punishing by incarceration.” *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). To survive summary judgment on his Eighth Amendment medical care claim, plaintiff must submit evidence showing that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. *Estelle*, 429 U.S. at 104; *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). A medical need may be serious if it is life-threatening, carries risks of permanent

serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual’s daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996) or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (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).

Plaintiff was granted leave to proceed on a claim that defendant Waterman violated his rights under the Eighth Amendment by refusing to treat his head injury caused by defendants’ use of excessive force. Defendants contend that they are entitled to summary judgment on plaintiff’s medical care claim because (1) plaintiff’s head injury was not a serious medical need and (2) even if it was, defendant Waterman was not deliberately indifferent to it.

I agree with defendants. Plaintiff has presented very little evidence that he suffered a serious head injury, stating only that he had an egg-size bump on his head and a headache. However, even if I assume that plaintiff’s head injury was a serious medical condition, plaintiff has provided the court no factual basis for finding that defendant was deliberately indifferent to it. Plaintiff’s only argument that defendant Waterman was deliberately

indifferent to his medical condition was that she did not provide him an ice pack for the bump on his head for two days and did not respond to his “emergency call” for two hours. Plt.’s Br., dkt. #59, at 12. This argument fails for several reasons.

First, plaintiff has not shown that any delay in treatment caused him any harm. *Walker v. Benjamin*, 293 F.3d 1030, 1038 (7th Cir. 2002) (citing *Langston v. Peters*, 100 F.3d 1235, 1240 (7th Cir. 1996) (prisoner who complains that delay in medical treatment rose to level of constitutional violation must place verifying medical evidence in record to establish detrimental effect of delay in medical treatment in order to succeed)). Second, plaintiff’s argument that defendant Waterman did not respond for two hours to his request to have his head examined is undermined by his deposition testimony, in which he stated that the first time he saw Waterman, he did not say anything about his head. Plt.’s Dep., dkt. #83, at 83-84. Plaintiff testified in his deposition that after he noticed the bump on his head, he asked to see a nurse, and defendant Waterman arrived in “five [or] ten minutes.” *Id.* at 87. A five or ten-minute delay does not constitute deliberate indifference.

Finally, any deliberate indifference analysis requires the court to consider the totality of the care provided. *Dunigan v. Winnebago County*, 165 F. 3d 587, 591 (7th Cir. 1999). When a medical professional has provided a prisoner some treatment, the question is whether that treatment is constitutionally adequate, that is, whether the individual acted with such blatant inappropriateness so to imply that her actions or omissions were not

actually based on medical judgment. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). Unless medical care evidences “intentional mistreatment likely to seriously aggravate the prisoner’s condition,” a prisoner’s dissatisfaction with a professional’s prescribed course of treatment does not give rise to a constitutional claim. *Snipes*, 95 F.3d at 592.

Although plaintiff contends that defendant Waterman should have provided him an ice pack, he points to no evidence in the record that could establish that Waterman’s failure to provide an ice pack was blatantly inappropriate or far below the general standard of care. Waterman saw plaintiff on at least four occasions regarding alleged injuries he had received from the other defendants. She examined him, concluded that he did not have any significant injuries and that the only treatment needed was Tylenol for the pain. Plaintiff has not shown that this treatment was blatantly inappropriate or likely to seriously aggravate his injuries. Therefore, plaintiff has not shown that Waterman was deliberately indifferent and Waterman is entitled to summary judgment on this claim.

C. State Law Claims

Plaintiff was granted leave to proceed on a state law medical negligence claim against defendant Waterman and state law assault and battery claims against defendants Grondin, Murray, Hunt, Taylor and Koeller. Defendants moved for summary judgment on all of plaintiff’s state law claims, contending that plaintiff did not file a notice of claim for the

allegations in the lawsuit, as required by Wis. Stat. § 893.82. Plaintiff has not opposed defendants' arguments regarding his failure to file a notice of claim and does not deny that he failed to file proper notices. Therefore, defendants' motion for summary judgment on plaintiff's state law claims is unopposed and will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment, dkt. #36, filed by defendants James Grondin, C.O. Hunt, Thomas Taylor, C.O. Murray, C.O. Koeller and Jolinda Waterman is GRANTED IN PART and DENIED IN PART. Defendants' motion is DENIED with respect to plaintiff's claims that defendants Grondin, Hunt and Taylor used excessive force against plaintiff in violation of the Eighth Amendment when transferring him to a holding cell on July 29, 2005 and that Grondin, Hunt, Taylor and Murray used excessive force against plaintiff when returning him to his cell after the cell search on July

29, 2005. Defendants' motion for summary judgment is GRANTED in all other respects.

Entered this 7th day of September, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge