

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

DWAYNE ALMOND,

Plaintiff,

v.

WILLIAM POLLARD and MOLLI ROLLI,

Defendants.

ORDER

10-cv-621-bbc

Plaintiff Dwayne Almond, a prisoner at the Green Bay Correctional Institution, has filed an action under 42 U.S.C. § 1983 in which he alleges that he is being denied medication for treatment of serious mental health problems. In an April 7, 2011 order, I denied plaintiff's motion for preliminary injunctive relief. Now plaintiff has filed two motions for reconsideration of that ruling, as well as a motion seeking return of some of his legal materials. I will deny all three motions.

In the April 7, 2011 order, I explained the reasons for the denial of plaintiff's motion for preliminary injunctive relief as follows:

At the heart of the matter is plaintiff's belief that he suffers from schizophrenia, versus Dr. McQueeney's professional opinion that plaintiff does not suffer from this mental illness. In deciding not to grant the request for Lorazepam, defendant Rolli relied on McQueeney's opinion as well as other factors, such as plaintiff's substance abuse problems, which made the addictive Lorazepam a poor choice for him. Plaintiff disagrees about whether he has schizophrenia, and notes that he has had a diagnosis of this illness previously, but the fact that McQueeney and Rolli disagree with his prior diagnosis does not sustain a deliberate indifference claim. Gutierrez v. Peters, 111 F.3d at

1374 (7th Cir. 1997). Plaintiff does not produce any evidence, such as expert testimony, suggesting that Rolli's decision to deny the request for Lorazepam was a "substantial departure from accepted professional judgment." Evidence such as this is necessary if he is to show that defendant Rolli was deliberately indifferent. Estate of Cole, 94 F.3d at 261-62.

Plaintiff raises several arguments in his motions for reconsideration. First, he argues that defendant Molli Rolli acted with deliberate indifference by relying on Dr. McQueeney's diagnosis that plaintiff did not have schizophrenia, rather than relying on previous doctors' diagnoses that plaintiff did have schizophrenia. However, in the April 7 order I considered this same argument and rejected it because McQueeney's and Rolli's disagreement with plaintiff's prior doctors does not support a deliberate indifference claim. Edwards v. Snyder, 478 F.3d 827, 831 (7th Cir. 2007) (Mere disagreement with doctor's medical judgment is insufficient to establish deliberate indifference.). Plaintiff does not provide any new evidence suggesting that the treatment decision was a substantial departure from accepted professional judgment, Estate of Cole v. Fromm, 94 F.3d 254, 262 (7th Cir. 1996), so there is no reason to change my earlier ruling based on this argument.

Second, plaintiff argues that defendants were untimely in filing their response to his motion for preliminary injunctive relief. However, this does not appear to be the case; defendants were given until March 7, 2011 to file a response, and they filed their response on that date.

Third, plaintiff again raises the argument that defendant Pollard and other prison officials have interfered with his legal materials, mentioning this in his motions for reconsideration and also filing a separate motion asking the court to order prison officials to return some of his legal materials. As I stated in the April 7, 2011 order, plaintiff is not

proceeding on an access to the courts claim in this case. Further, the materials plaintiff seems to be without are medical records indicating that doctors have previously diagnosed schizophrenia, but it is already undisputed that plaintiff has had a schizophrenia diagnosis in the past. Any further materials he submits showing this to be the case would not change the conclusion that McQueeney's and Rolli's disagreement with prior doctors fails to support a deliberate indifference claim. Accordingly, I will deny plaintiff's motions for reconsideration as well as his motion to return his legal materials.

ORDER

IT IS ORDERED that

1. Plaintiff Dwayne Almond's motions for reconsideration of this court's April 7, 2011 order denying his motion for preliminary injunctive relief, dkt. ## 36 & 37, are DENIED.

2. Plaintiff's motion for the return of legal materials, dkt. #42, is DENIED.

Entered this 1st day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge