IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

DION MATHEWS and MUSTAFA-EL K.A. AJALA
formerly known as Dennis E. Jones-El,

OPINION AND ORDER

Plaintiffs,

10-cv-742-bbc

v.

RICK RAEMISCH, GARY BOUGHTON,
JANET GREER, DAVID BURNETT,
CYNTHIA THORPE, LT. HANFELD,
MARY MILLER, KAMMY JONES and
WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Pro se plaintiffs Dion Mathews and Mustafa-el K.A. Ajala are prisoners housed in segregation at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Both allege that they have serious medical needs related to their feet and lower legs and have filed a motion for a preliminary injunction on their claim under the Eighth Amendment that defendants are failing to treat those needs. (Plaintiffs have a separate claim under the Americans with Disabilities Act related to their feet, but that claim is not a subject of their motion.) Plaintiffs seek a specific form of relief in their motion. In particular, they ask that defendants be required to provide them "velcro support shoes" instead of the canvas shoes

they have now.

In River of Life Kingdom Ministries v. Village of Hazel Crest, 585 F.3d 364, 369 (7th Cir. 2009), the court summarized the standard for obtaining a preliminary injunction:

> A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. To obtain such relief, the moving party must first demonstrate that it has a reasonable likelihood of success on the merits, lacks an adequate remedy at law, and will suffer irreparable harm. The court must then balance, on a sliding scale, the irreparable harm to the moving party with the harm an injunction would cause to the opposing party. The greater the likelihood of success, the less harm the moving party needs to show to obtain an injunction, and vice versa. The court must also consider whether the public interest will be harmed sufficiently that the injunction should be denied.

Id. at 369 (internal quotations and citations omitted).

I am denying plaintiffs' motion because they have not shown a reasonable likelihood of success on the merits. To receive injunctive relief on a claim for inadequate medical care under the Eighth Amendment, a prisoner must show that the defendants are failing to respond reasonably to a known, serious medical need. Hayes v. Snyder, 546 F.3d 516, 522 (7th Cir. 2008). The question is narrower for the purpose of plaintiffs' motion for a preliminary injunction because plaintiffs are arguing that defendants are violating the Eighth Amendment by refusing to allow plaintiffs to have "velcro shoes." Thus, to prevail on their motion, plaintiffs must show a reasonable likelihood of proving not only that they have a serious medical need *now* but also that the only reasonable response to it is providing them

with "velcro shoes."

Plaintiffs have failed to adduce any specific evidence that they currently suffer from a serious medical need that requires immediate injunctive relief. It is undisputed that both plaintiffs suffered injuries to their lower extremities: plaintiff Mathews suffered a sports-related injury to his left ankle and a gunshot wound to his right foot; plaintiff Ajala suffered a patella tendon tear and an Achilles tendon tear that required surgery. However, these are not recent injuries. Neither plaintiff identifies when their injuries occurred, but Ajala includes medical records related to his injuries that go back as far as 1999, dkt. #1, exh. 4; Mathews's go back to 2003. Dkt. #44, exh. #53. Plaintiffs do not cite any medical records that support a finding of continued disability or even complaints they made regarding their feet after 2009.

Plaintiffs rely heavily on the fact that both of them had a "medical restrictions/special needs" form in which a prison doctor approved "velcro shoes." The doctor who signed these forms denies that he ordered the shoes because of a conclusion that they were medically necessary, Cox Aff., dkt. #35, at ¶¶ 19, 39 and 86, but this is not necessarily dispositive because the order itself may be evidence of a serious medical need. Cf. Gil v. Reed, 535 F.3d 551, 556 (7th Cir. 2008) ("[T]he very fact that prison medical staff prescribed him an antibiotic is evidence permitting the inference that the drug was medically necessary."). However, even if I assume that plaintiffs had a serious medical need when the forms were

signed, the most recent form is from February 2009 as to plaintiff Ajala and September 2007 as to plaintiff Mathews. Dkt. #1, exhs. 9 and 17. It is not reasonable to infer that plaintiffs still have a serious medical need for shoes that they may have needed two to four years ago.

This leaves plaintiffs' own assessment of their condition in their affidavits. Plaintiffs are correct that a prisoner's own subjective complaints of pain may be enough to sustain a claim under the Eighth Amendment, e.g., Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), but the evidence must be sufficient to support a conclusion that the prisoner's pain is sufficiently serious. E.g., Walker v. Benjamin, 293 F.3d 1030, 1039-40 (7th Cir. 2002) ("great pain" caused by recent surgery); Jones v. Simek, 193 F.3d 485, 490 (7th Cir. 1999) ("severe pain" caused by nerve blockage); Murphy v. Walker, 51 F.3d 714, 719 (7th Cir. 1995) ("excruciating pain" caused by recent head injury). "[M]inor aches and pains" will not give rise to a claim under the Constitution. Cooper, 97 F.3d 914 at 916 -17.

In this case, plaintiffs' description of their current pain is simply too vague and conclusory to support the "drastic remedy" of preliminary injunctive relief. Plaintiffs devote one sentence in their affidavits to their present situation. Dkt. #32, ¶ 3; dkt. #25, ¶ 3. Using almost identical language, plaintiffs say that they suffer from "chronic pain," "instability" and "swelling," but it is impossible to infer from this that plaintiffs's symptoms are sufficiently serious to trigger any duties under the Eighth Amendment.

Even if I assumed that plaintiffs suffer from a serious medical need, they have failed

to adduce any evidence that defendants are acting unreasonably by refusing to approve velcro shoes or even that such shoes would be helpful to their condition. In fact, although both plaintiffs have worn these shoes in the past, neither of them says that the shoes alleviated or lessened their pain or any other symptom. The Eighth Amendment does not require prison officials to provide medical care that will provide no benefit simply because a prisoner received similar treatment in the past.

A general rule in all cases is that the plaintiff must show that the relief he seeks will remedy his injury. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 107 (1998) ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement."). Thus, without evidence that the shoes plaintiffs request will help their condition, they cannot obtain an injunction to obtain the shoes. I do not consider the more general question whether plaintiffs may be entitled to other relief because the "velcro shoes" are the only relief they request in their motion.

If plaintiffs have additional evidence related to the seriousness of their conditions or possible treatments for them, they may present that evidence at summary judgment or trial. However, they have failed to show that they are entitled to a preliminary injunction.

ORDER

IT IS ORDERED that the motion for a preliminary injunction filed by plaintiffs Dion Mathews and Mustafa-El K.A. Ajala, dkt. #23, is DENIED.

Entered this 9th day of May, 2011.

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