

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

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DWAYNE ALMOND,

Plaintiff,

OPINION AND ORDER

v.

12-cv-259-bbc

WARDEN WILLIAM POLLARD,  
DR. SUMINICHT, M.D.,  
R.N. AMY SCHRAUFNGED, R.N. S. JACKSON,  
ANGLIA KROLL (ICE -PA),  
DR. DAVID BURNETT, B.H.S. MEDICAL. D.,  
DR. SCOTT HOFTIEZER, B.H.S. A.M.D.,  
MR. JIM GREER, B.H.S. DIRECTOR,  
MS. MARY MUSE, B.H.S. DIRECTOR OF NURSING,  
and OFFICIAL JONES,

Defendants.  
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Plaintiff Dwayne Almond, an inmate at the Waupun Correctional Institution, is proceeding on Eighth Amendment deliberate indifference claims against the above-captioned defendants for failing to treat his lower back and abdominal ailments. In a March 26, 2013 order, I denied motions for summary judgment and preliminary injunctive relief brought by plaintiff. Now he has filed two motions for reconsideration of that decision, a motion “for emergency help” and a motion to appoint an expert witness. For reasons stated below, I will deny each of these motions.

In the March 25, 2013 order, I stated the following in denying plaintiff’s motion for

summary judgment:

Given the facts submitted by the parties, I will deny plaintiff's motion for summary judgment. Plaintiff has failed to show that defendants have been deliberately indifferent to a serious medical need. At this point, plaintiff has a diagnosis of a hemorrhoid. Even if I assume that this constitutes a serious medical need, plaintiff's medical records show that he has been receiving treatment. Plaintiff is simply not qualified to testify that he has a "lower abdominal infection" or that defendant Sumnicht's treatment options have violated the Eighth Amendment. When a party argues that his medical providers' treatment decisions have been made with deliberate indifference, he must show that the decisions were "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision[s] on such a judgment." Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996); Snipes v. De Tella, 95 F.3d 586, 590-91 (7th Cir.1996) (plaintiff must show that treatment decision was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate his condition").

Dkt. #40 at 5-6. In denying plaintiff's motion for preliminary injunctive relief, I stated, "Plaintiff has submitted essentially the same proposed findings of fact . . . . These facts fare no better the second time around." Id. at 7. Plaintiff has filed two motions for reconsideration of these rulings, arguing that I did not consider certain facts and that I am biased against him.

I will deny both of these motions. Plaintiff is simply incorrect about what he produced in the summary judgment proceedings and what his medical records mean. The focal point of his motions is that he believes I ignored a June 4, 2012 report from Dr. Robert Mikkelsen at Waupun Memorial Hospital, produced after plaintiff's colonoscopy. Plaintiff states that he referred to the report in his proposed findings of fact, but he does not. In his reply brief, plaintiff states that a colonoscopy picture shows that there is "a hole in [his] lower abdomen that's allowing his intestenced [sic] to seek [sic] out the hole . . . ."

Plaintiff, who is a frequent litigator in this court, should not be surprised that I did not consider this evidence because it was not properly set forth in his proposed findings of fact. However, even if he had properly submitted that proposed finding, I could not accept it because plaintiff is not qualified to opine about what the colonoscopy picture shows. Oddly, plaintiff did not include Dr. Mikkelsen's report concerning the colonoscopy. He attaches the report to one of his motions for reconsideration. However, even if I allowed plaintiff to enter new evidence into the summary judgment record, it says the opposite of what plaintiff understands it to mean.

Mikkelsen's report states "PREOPERATIVE DIAGNOSIS: Left lower quadrant pain and occult blood in stool." Dkt. #45, Exh. R. Later in the report, Mikkelsen states, "[Plaintiff's] complaints are of relatively chronic constipation, more recent left lower quadrant abdominal pain and bulging which he describes as a 'hernia' and the presence of occult blood in the stool." Id. In short, rather than stating that plaintiff has these problems, he was stating plaintiff's complaints. The report continues as follows:

Despite a poor bowel preparation, examination was reasonably good once the stool had been cleared. No abnormalities were seen from the cecum to the anus with slow withdrawal. Very tiny polyps certainly could have been obscured by stool but no significant lesions are likely to have been overlooked in this examination.

Hence, this is a normal colonoscopy with the caveat noted above.

Id. Contrary to plaintiff's belief, Mikkelsen did not find any problems. Therefore it does not support plaintiff's deliberate indifference claims. Plaintiff goes on to argue that "poor bowel preparation" refers to a medical problem, and argues that the colonoscopy picture he

previously referred to shows this. However, it is clear from the report that this refers to the preparation of plaintiff's bowel for the colonoscopy: "The colonoscope was introduced and advanced rather tediously because of poor bowel prep. There was quite a bit of solid and liquid stool present and nearly 2 liters of stool were removed . . . ." *Id.* Ultimately, plaintiff provides no evidence suggesting that I was incorrect in denying his motions for summary judgment and preliminary injunctive relief.

In support of his argument that I am biased against him (which I construe as a motion for my recusal), he states that I have considered only the evidence submitted by defendants. This is incorrect. The facts in this case are largely undisputed and located in plaintiff's medical records. It is plaintiff's *interpretation* of the facts that is different from defendants—he believes that test results and photographs show some kind of intestinal or abdominal ailment, but at this point, the medical professionals who have examined plaintiff disagree. To the extent plaintiff believes that I am biased against him because he thinks he should have prevailed on his motions, adverse rulings by themselves are not a sufficient basis for recusal. Litekey v. United States, 510 U.S. 540, 555 (1994).

Plaintiff has also filed a motion for the court to appoint Dr. Mikkelsen as an expert. However, the court already has Mikkelsen's expert testimony in the form of his colonoscopy report. Moreover, given his opinion that plaintiff's colonoscopy was normal, appointment of Mikkelsen would not help plaintiff's case. The motion will be denied.

Finally, plaintiff has filed a motion "for emergency help," which I will construe as another motion for preliminary injunctive relief. Because that motion does not comply with

this court's procedures for briefing preliminary injunction motions (plaintiff has not submitted proposed findings of fact), I will deny it without prejudice. However, plaintiff should not renew his motion unless he can articulate specific facts showing how prison officials are refusing to treat a serious medical need.

## ORDER

IT IS ORDERED that

1. Plaintiff Dwayne Almond's motions for reconsideration of the March 26, 2013 order in this case, dkt. ##43, 45 are DENIED.

2. Plaintiff's motion for my recusal, dkt. #45, is DENIED.

3. Plaintiff's motion to appoint an expert, dkt. #47, is DENIED

4. Plaintiff's motion "for emergency help," dkt. #46, is DENIED.

Entered this 17th day of May, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge