

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

ROBERT B. CIARPAGLINI,

Plaintiff,

v.

MEMORANDUM and ORDER

KEVIN KALLAS, M.D., JEFFREY
KNUPPEL, M.D., ROBERTA LAST
and BETH DITTMANN,

05-C-412-S

Defendants.

Plaintiff Robert B. Ciarpaglini was allowed to proceed on his Eighth Amendment claim against defendants Kevin Kallas, Jeffrey Knuppel, Roberta Last and Beth Dittmann. In his complaint he alleges that the defendants denied him his prescription medications.

On September 12, 2005 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

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. This motion has been fully briefed and is ready for decision.

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).

Plaintiff moves to strike defendants' proposed findings of fact numbers 8, 21, 25, 27, 31, 37, 42, 44, 46, 47, 49, 52, 54 and 55 and the portions of affidavits supporting them because they are hearsay. Proposed findings of facts 8, 52, 54 and 55 and supporting affidavit paragraphs are not hearsay and will not be stricken. Proposed findings of fact 21, 25, 27, 31, 37, 42, 44, 46, 47 and 49 are hearsay and will be stricken.

FACTS

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

Plaintiff Robert Ciarpaglini is an adult inmate at the Dodge Correctional Institution, Waupun, Wisconsin (DCI). Defendant

Roberta Last is a Nurse Clinician 2 at DCI. Defendant Beth Dittman is the nursing supervisor at DCI. Defendant Dr. Jeffrey Knuppel, M.D. is a Psychiatrist at DCI. Defendant Kevin Kallas is the Mental Health Director at DCI.

Plaintiff has been diagnosed with various psychiatric disorders including bipolar disorder with psychotic feature, panic disorder and attention-deficit hyperactivity disorder. He also has a history of various personality disorders, polysubstance dependence, schizoaffective disorder and facetious disorder.

On May 17, 2005 Dr. Hahn from the Janesville Psychiatric Clinic, prescribed Lamictal, Ambien, Seroquel, Xanax and Concerta for plaintiff. Plaintiff had been previously prescribed Flexeril. On May 20, 2005 plaintiff was incarcerated at the Rock County Jail. At the Rock County Jail Dr. Cullinan prescribed only Lamictal and Concerta for plaintiff.

Plaintiff was transferred from Rock County Jail to DCI on May 27, 2005. Defendant Roberta Last performed an initial intake screening of plaintiff. The Health Transfer Form from Rock County Jail indicated that plaintiff was taking prescribed medications Lamictal, a mood stabilizing medication, and Concerta, a medication for ADHD. Although plaintiff had been prescribed Alprazolam, Ambient, Seroquel and Flexeril by private doctors, he was not taking these at the time of his transfer to DCI from the Rock County Jail. Defendant Last continued plaintiff's Lamictal and

Concerta prescriptions pursuant to Department of Corrections Policy/Procedure 800:03.

On May 28, May 29, May 31 and June 1, 2005 plaintiff submitted health services requests asserting that he was being denied his prescription medications of Seroquel, Alprazolam, Ambien and Flexeril. Defendant Dittman received a letter from plaintiff on June 1, 2005. She informed him he was receiving the same medications, Lamictal and Concerta, he had received at Rock County Jail and that he could discuss his medication concerns at his upcoming doctor's appointment.

On June 3, 2005 plaintiff was seen by Dr. Knuppel who prescribed Seroquel, an anti-psychotic medication, for him. Dr. Knuppel also prescribed Doxepin, a sedating antidepressant, for plaintiff instead of Ambien. Since Dr. Knuppel believed plaintiff may have been suffering from some withdrawal of Alprazolam, he prescribed Clonazepam for plaintiff for thirty days.

Plaintiff was seen by Dr. Knuppel on June 14, 2005. Plaintiff complained of panic attacks and did not feel the Clonazepam was adequate. Dr. Knuppel offered to prescribe Paxil for plaintiff which he refused. Dr. Knuppel then prescribed a trial of Hydroxyzine, a sedating antihistamine, that he could take as needed for anxiety. Dr. Knuppel continued plaintiff's other medications without any changes.

On June 28, 2005 plaintiff met with Dr. Knuppel. Plaintiff reported that Hydroxyzine had not been helpful with anxiety but that Doxepin was helping to "level out" his mood. Dr. Knuppel increased plaintiff's Doxepin dose.

On July 12, 2005 Dr. Knuppel met with plaintiff, but no medication changes were made. On August 2, 2005 plaintiff was seen by Dr. Knuppel who continued him on Doxepin, Seroquel, Lamictal and Concerta. Dr. Knuppel added Mirtazapine, an antidepressant medication, to help primarily with sleep.

Dr. Knuppel discussed plaintiff's case with his supervisor, defendant Kallas. Kallas agreed with Knuppel's decisions concerning plaintiff's treatment and medications.

MEMORANDUM

Defendants move for summary judgment on plaintiff's Eighth Amendment claim. Plaintiff claims that the defendants were deliberately indifferent to his serious medical need when they denied him his prescription medications. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Deliberate indifference of a serious medical need violates an inmate's Eighth Amendment rights. Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is a subjective standard which requires that the defendant knew that plaintiff had a serious

medical condition and acted with callous disregard to this condition. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Plaintiff contends that the denial of his prescribed medications for Seroquel, Alprazolam, Ambien and Flexeril was deliberate indifference to his serious medical condition. It is not disputed that plaintiff had serious psychological disorders. When plaintiff was not incarcerated a doctor had prescribed these medications for him, but while he was incarcerated at the Rock County Jail from May 20-May 27 these medications were not prescribed by the jail doctor.

When he was transferred to DCI on May 27, 2005 defendant Last continued plaintiff's medications that he was receiving at Rock County Jail which were Lamictal and Concerta. Because he had not been receiving Seroquel, Alprazolam, Ambien or Flexeril at the time of his transfer she could not prescribe them for him. There is no evidence that defendant Last was aware of any facts from which an inference could be drawn that a substantial risk of serious harm existed because of her decision to prescribe only the medications he was currently taking at the time of his transfer and that she drew that inference. Defendant Last was not deliberately indifferent to plaintiff's serious medical need.

From May 27 to June 1 plaintiff submitted health services requests seeking the medications Seroquel, Alprazolam, Ambien and Flexeril because he was experiencing panic attacks. Pursuant to his requests plaintiff was seen by Dr. Knuppel on June 3, 2005. Dr. Knuppel decided to place plaintiff on Seroquel but to not prescribe Alprazolam, Ambien or Flexeril. Instead, Dr. Knuppel prescribed Doxepin and a limited prescription of Clonazepam for plaintiff. Dr. Knuppel continued to see plaintiff frequently and monitor his medications.

The fact that Dr. Knuppel decided not to prescribe the same medications as another doctor who had seen plaintiff when he was not incarcerated does not rise to the level of deliberate indifference. Dr. Knuppel prescribed other medications for plaintiff in order to treat his panic attacks. There is no evidence that defendant Knuppel was aware of any facts from which an inference could be drawn that a substantial risk of serious harm existed because of his medical decisions and that he drew that inference. Dr. Knuppel treated plaintiff's psychiatric condition and was not deliberately indifferent to it.

Both defendants Kallas and Dittman were aware of the medical treatment that plaintiff was receiving. There is no evidence that either were deliberately indifferent to plaintiff's serious medical condition. Defendants are entitled to judgment as a matter of law

on plaintiff's Eighth Amendment claim and their motion for summary judgment will be granted.

Plaintiff is also pursuing state law claims of negligence in his complaint. This Court declines to exercise continuing supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(c)(3) and United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1986). See Brazinski v. Amoco Petroleum Additives, Co., 6 F. 3d 1176, 1182 (7th Cir. 1993). Plaintiff's state law claims 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 claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's motion to strike defendants' proposed findings of fact 8, 52, 54 and 55 and supporting affidavit paragraphs is DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to strike defendants' proposed findings of fact 21, 25, 27, 31, 37, 42, 44, 46, 47 and 49 and supporting affidavit paragraphs is GRANTED.

IT IS FURTHER ORDERED that defendants' motion for summary judgment is GRANTED.

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IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants against plaintiff DISMISSING his complaint and all federal law claims with prejudice and costs and all state law claims without prejudice.

Entered this 26th day of October, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge