

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

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LARRY RAY HOLMAN,

Plaintiff,

v.

MEMORANDUM and ORDER

GLENN HEINZL, CANDACE WARNER,  
BOB GILMEISTER, LISA GREGAR,  
CATHERINE FARREY, MATTHEW FRANK,  
STEVE CASPERSON, RICK RAEMISCH and  
JAMES GREER,

05-C-499-S

Defendants.

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Plaintiff Larry Ray Holman was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Glenn Heinzl, Candace Warner, Bob Gilmeister, Lisa Gregar, Catherine Farrey, Matthew Frank, Steve Casperson, Rick Raemisch and James Greer and on his First Amendment retaliation claim against defendant Farrey. In his complaint he alleges that the defendants denied him medical treatment.

On November 7, 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).

#### 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.

At all times material to this action plaintiff Larry Ray Holman was incarcerated at the New Lisbon Correctional Institution, New Lisbon, Wisconsin (NLCI). Defendant Glenn Heinzl is a doctor at NLCI. Defendants Candace Warner, Bob Gilmeister and Lisa Gregor are nurses at NLCI. Defendant Catherine Farrey is the warden at NLCI. Defendant Matthew Frank is the Secretary of the Wisconsin

Department of Corrections (DOC) and defendant Rick Raemisch is the Deputy Secretary. Defendant Steve Casperson is the administrator of DOC's Division of Adult Institutions. Defendant James Greer is the Health Service Administrator for DOC.

Prior to plaintiff's transfer to NLCI he had a pre-treatment work-up for his Hepatitis C. It was determined based on his liver biopsy and lab reports that plaintiff did not have fibrosis nor require treatment. An MRI performed on August 27, 2004 confirmed that plaintiff's lesions on his liver and kidneys were benign cysts.

On January 2, 2005 plaintiff submitted a Health Services Request (HSR) complaining of kidney and liver pain caused by his medications. He was seen by Dr. Heinzl the next day. Dr. Heinzl ordered TMP\SMX for plaintiff for his prostate condition. On January 10, 2005 plaintiff was seen by Dr. Heinzl who ordered blood tests to monitor plaintiff's Hepatitis C.

On March 1, 2005 plaintiff reported a morning bowel movement with dark red blood. He was seen by defendant Gregar in the HSU who performed an abdominal examination, checked plaintiff's blood pressure and tested his blood. Plaintiff's exam was normal and his hemoglobin count was normal which indicated that he had no severe blood loss. Defendant Gregar discussed plaintiff's complaints with Dr. Heinzl who prescribed Omeprazole and Rantidine for plaintiff for three months. On May 18, 2005 plaintiff submitted an HSR

complaining about liver pain. Dr. Heinzl advised plaintiff that his liver and kidney cysts were not medically significant and that his lab tests were normal.

On June 7, 2005 plaintiff was seen in the HSU for stomach problems. His exam was normal and he was given pink bismuth for abdominal irritation. Defendant Gregar informed plaintiff that the water was not contaminated and that the City of New Lisbon had placed non-toxic dye in the water system.

On June 15, 2005 plaintiff was seen in the HSU for loose stools and cramps which he attributed to the water. A stool sample was sent to the lab to be tested for ova and parasites. An ultrasound was negative for gallbladder disease. Dr. Heinzl prescribed Imodium Loperamide and TMP-SMX for plaintiff.

On June 16, 2005 plaintiff submitted an HSR stating that he noticed dark blood in his stool and that he believed it was due to the water. It is disputed whether he checked the box stating that he wished to see medical staff. Defendant Gilmeister responded to his request the same day advising him that his stool sample had been sent to the lab.

On June 19, 2005 plaintiff submitted an HSR stating that he desired to see health services staff. He complained of pain and bleeding. He was advised that he would see the doctor soon.

On June 21, 2005 plaintiff submitted an HSR stating he had pain in his stomach, liver, prostate and kidneys. He also

requested a refill of his omeprazole prescription. He did not mark the box that stated he desired to see health services staff. Defendant Warner responded stating that his refill request would be granted and that he would be scheduled to see Dr. Heinzl. He filed a second HSR on June 21, 2005 stating he was still in pain and seeing blood in his stool.

On June 24, 2005 Dr. Heinzl informed plaintiff in writing that the stool tests were normal and that no bacterial germs or parasites were found. That same day plaintiff submitted an HSR stating he was in pain and that there was blood in his stool. He was advised that he had a doctor's appointment the next week and that he could request to see a nurse prior thereto. On June 26, 2005 and June 28, 2005 plaintiff repeated his concerns in HSRs and requested to see Health Services Staff. He was advised that he would see the doctor soon.

On June 30, 2005 plaintiff submitted an HSR requesting the outcome of the tests stating that he was still in pain and had no more loperamide. Dr. Heinzl responded that a nurse would see plaintiff over the weekend and that the loperamide had been reordered. He again advised plaintiff that the stool tests were normal.

On July 6, 2005 plaintiff submitted an HSR stating that he wished to see medical staff. Defendant Gregar advised him that he had an appointment to see Dr. Heinzl the next day.

Dr. Heinzl examined plaintiff on July 7, 2005 and found that his abdomen was not distended and that his bowel sounds were normal. On July 20, 2005 Dr. Heinzl requested a gastrointestinal consult for plaintiff. On August 2, 2005 Dr. Heinzl advised plaintiff that the request for a GI consult had been approved and was being scheduled. Dr. Heinzl also noted that plaintiff's blood work showed no severe or chronic blood loss.

Between December 2004 and August 12, 2005 plaintiff was seen by Health Services staff 43 times for a variety of ailments.

On or around June 6, 2005 the City of New Lisbon reported that it had placed a non-toxic dye into one of the wells that service NLCI which made the water turn pink. The dye disappeared from the water system in a few days.

#### MEMORANDUM

Plaintiff was allowed to proceed on his Eighth Amendment deliberate indifference claims against the defendants. He alleges that they were deliberately indifferent to his serious medical need of bleeding and liver and kidney pain and to the health hazard of contaminated water. He also alleges that defendant Farrey retaliated against him for filing a lawsuit by delaying his medical care. 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).

The first issue is whether plaintiff had a serious medical need. His subjective complaints of internal bleeding and pain are serious. The objective medical tests that were performed, however, indicate that plaintiff did not have a serious medical need. An MRI performed on August 27, 2004 before he arrived at NLCI confirmed that the lesions on plaintiff's liver and kidneys were benign cysts. Blood tests performed on plaintiff from March 1, 2005 through August 2005 show his blood count was normal. These normal results indicate plaintiff was not suffering from severe or chronic blood loss from any internal bleeding. Dr. Heinzl's physical exams of plaintiff were normal. Tests on plaintiff's stool samples were normal and no bacterial germs or parasites were found. The undisputed evidence supports a conclusion that plaintiff did not have a serious medical need.

Plaintiff argues that defendants were deliberately indifferent to his medical concerns. The Court will address plaintiff's argument even though it has found plaintiff did not have a serious

medical need. Plaintiff specifically argues that although he requested to see health services staff from June 16, 2005 to July 4, 2005 he was not seen by Dr. Heinzl until July 7, 2005.

Defendants respond that plaintiff did not request to see health services staff during this time. Plaintiff's exhibits indicate he requested to see health services staff on June 16, June 19, June 21, June 24, June 26, June 28, June 30 and July 6, 2005. Although plaintiff was not seen by health services staff they responded to each request.

On June 16, 2004 plaintiff was advised that his stool sample had been sent to the lab. On June 19, 2005 he was advised that he would be scheduled to see the doctor. On June 21, 2005 defendant Warner advised him that his omeprazole would be refilled and he would be scheduled to see the doctor. On June 24, 2005 Dr. Heinzl advised plaintiff that his stool tests were normal. In response to his June 26 and 28 requests he was advised that he would see the doctor soon. On June 30, 2005 Dr. Heinzl advised plaintiff that he would refill the loperamide prescription, that the stool tests were normal and that a nurse would see him on the weekend. On July 6, 2005 plaintiff was advised he would be seen by the doctor the next day.

When Dr. Heinzl examined plaintiff on July 7, 2005 he found that plaintiff's abdomen was not distended and that his bowel sounds were normal. Although Dr. Heinzl could find nothing wrong



with plaintiff's stomach he requested a GI consult for plaintiff which was approved in August 2005.

Although plaintiff was not seen by HSU staff from June 16 through July 7, 2004, staff responded to his requests. Further, the exams by Dr. Heinzl on June 15 and July 7 indicated no abnormalities. Tests indicated that his stool samples and blood tests were normal. These undisputed facts indicate that defendants were not deliberately indifferent to plaintiff's subjective concerns. Defendants are entitled to judgment in their favor on plaintiff's Eighth Amendment claim that they were deliberately indifferent to his serious medical need.

Plaintiff also claims that defendants were deliberately indifferent to the health hazard of contaminated water. The undisputed evidence indicates that for a few days there was a non-toxic dye placed in the water by the City of New Lisbon. There is no evidence that drinking this water harmed plaintiff. His blood tests and stool tests were normal. Accordingly, defendants are entitled to judgment in their favor on this Eighth Amendment claim.

Plaintiff also claims that defendant Farrey retaliated against him by delaying his medical treatment. Plaintiff has presented no evidence that defendant Farrey made any decision regarding his medical treatment. Accordingly defendant Farrey is entitled to judgment in her favor on this claim.

Defendants' motion for summary judgment will be granted. Judgment will be entered in favor of defendants against plaintiff dismissing his complaint and all claims contained therein with prejudice and costs. Plaintiff's motion for a copy of his complaint will be denied as cumulative and unnecessary at this time.

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 (7<sup>th</sup> Cir. 1997).

ORDER

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

IT IS FURTHER ORDERED that plaintiff's motion for a copy of his complaint is DENIED.

IT IS FURTHER ORDERED that judgment is entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 28<sup>th</sup> day of November, 2005.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge