

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

CARLOS A. ABADIA,

Plaintiff,

v.

MEMORANDUM and ORDER

MICHAEL BROWN, LARRY FUCHS,
AMY MORALES and SERGEANT BELOUNGY,

06-C-088-S

Defendants.

Plaintiff Carlos A. Abadia was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Michael Brown, Larry Fuchs, Amy Morales and Sergeant Beloungy. In his complaint he alleges that the defendants denied him access to bathroom facilities.

On May 25, 2006 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.

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.

Plaintiff Carlos Abadia is currently incarcerated at the Redgranite Correctional Institution, Redgranite, Wisconsin. At all times material to this action he was incarcerated at the New Lisbon, Correctional Institution, New Lisbon, Wisconsin (NLCI).

Defendant Paul Beloungy is a Correctional Sergeant at NLCI. At all times material to this action defendants Michael Brown and Amy L. Morales were Unit Managers at NLCI. Defendant Larry Fuchs is the Security Director at NLCI.

At NLCI there are four standing counts each day: 7:25 a.m., 11:10 a.m., 4:45 p.m. and 9:15 p.m. The day room is closed 10

minutes prior to each count. This closing is announced five minutes prior to the closing. A second announcement is made 10 minutes prior to the standing count. No movement by inmates is allowed during the count. Each standing count of the entire institution takes approximately 15 minutes. The unit count takes only several minutes. The purpose of the standing counts is to account for all inmates and to make sure the security of the institution is not breached.

On February 28, 2005 plaintiff met with Nurse Gregar to discuss his intestinal problems. Dr. Glen Heinzl ordered laboratory tests. Plaintiff's stool tested positive for *Clostridium difficile* which causes diarrhea. On March 11, 2005 Dr. Heinzl prescribed Metronidazole for plaintiff's condition. On March 21, 2005 Dr. Heinzl saw plaintiff and reported improvement.

On April 1, 2005 plaintiff alleges he was not allowed to use the bathroom during the standing count.

On April 4, 2005 Dr. Heinzl examined plaintiff. Plaintiff did not express any concerns about being denied access to bathroom facilities. During an examination of plaintiff's rectum, Dr. Heinzl found no sign of colitis or proctitis but found a tear in plaintiff's anal canal. Dr. Heinzl recommended Vaseline for the tear.

Dr. Heinzl saw plaintiff again on April 13, 2005 and recommended testing plaintiff's stools for blood. All the tests

came back negative. On May 6, 2005 plaintiff was retested for Clostridium difficile infection and the test was normal. Because of plaintiff's continued complaints about blood in his stool, Dr. Heinzl made an appointment for plaintiff to have a colonoscopy at the University of Wisconsin Hospital and Clinics.

On June 15, 2005 plaintiff alleges he was denied access to bathroom facilities. That same day he requested to be seen in the Health Services Unit (HSU). He was seen on June 17, 2005 in the HSU and reported a "black tarry" stool on June 14, 2005.

On July 11, 2005, Candace Warner, an R.N. at NLCI, issued a memorandum concerning plaintiff's complaints that he was denied access to the bathroom on the housing unit during count time. She advised him to talk to the unit staff and suggested that he use the bathroom when it is announced that standing count will be in ten minutes.

On July 13, 2005 plaintiff had a colonoscopy which revealed he had mild colitis and mild proctitis. The doctor at the University of Wisconsin Hospital and Clinics recommended a diet high in fiber and avoiding all non-steroidal anti-inflammatory drugs such as Ibuprofen. Dr. Heinzl ordered plaintiff a high fiber diet.

It is Dr. Heinzl's professional opinion that plaintiff's colitis and proctitis were not serious medical conditions during his incarceration at NLCI. Dr. Heinzl did not believe that

plaintiff needed any special arrangements for his toileting needs.

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. 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. On July 13, 2005 plaintiff was diagnosed with mild colitis and mild proctitis after a colonoscopy at the University of Wisconsin Hospital and Clinics. The doctor at the clinic recommended that plaintiff eat a high fiber diet and avoid non-steroidal anti-inflammatory drugs. In Dr. Heinzl's professional opinion plaintiff's conditions were not a serious medical need.

Because this opinion is undisputed, the Court finds that plaintiff did not have a serious medical need.

Plaintiff argues that defendants were deliberately indifferent to his serious medical need. The Court will address plaintiff's argument even though it has found plaintiff did not have a serious medical need. Plaintiff alleges that on April 1, 2005 and June 15, 2005 he was not allowed to use the bathroom facilities during standing count. Plaintiff was not diagnosed with mild colitis and mild proctitis until after his requests. Even after the diagnosis Dr. Heinzl did not believe that any special toileting arrangements were necessary for plaintiff.

Defendants Beloungy, Brown, Fuchs and Morales did not know on April 1 or June 15, 2005 that plaintiff had any medical need that required special toileting arrangements. Although plaintiff could not use the bathroom facilities during the standing count, none of the defendants refused any request made by plaintiff to use the bathroom facilities. The undisputed facts indicate that defendants were not deliberately indifferent to plaintiff's subjective concerns. To the contrary, plaintiff received all examinations, treatments and attention that could have been provided. 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 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 defendants' motion for summary judgment is GRANTED.

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 13th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge