

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

THOMAS SHELLEY,

Plaintiff,

v.

MEMORANDUM and ORDER

MARTY BARTELS, DR. COX and
RICHARD SCHNEITER,

06-C-479-S

Defendants.

Plaintiff Thomas Shelley was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Mary Bartels, Dr. Cox and Richard Schneiter. In his complaint he alleges that the defendants exposed him to scabies and other dangerous conditions while he was incarcerated at the Prairie Du Chien Correctional Institution.

On November 29, 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).

Although plaintiff makes conclusory allegations that defendants have failed to provide adequate discovery and have submitted fraudulent affidavits, these allegations are not supported by any evidence in the record. Accordingly, plaintiff's motions to compel discovery and quash defendants' motion for summary judgment will be denied.

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 Thomas Shelley is currently incarcerated at the Stanley Correctional Institution, Stanley, Wisconsin. At all times material to this action he was incarcerated at the Prairie Du Chien Correctional Institution, Prairie Du Chien, Wisconsin (PDCI).

Defendant Dr. Burton Cox has been the physician at PDCI since January 1, 2003. Defendant Mary Bartels, a registered nurse, is the Health Services Unit (HSU) Manger at PDCI. Defendant Richard Schneiter is the warden at PDCI.

Inmates are encouraged to notify HSU with skin problems such as boils, draining wounds and rashes. Methicillin-Resistant Staphylococcus Aureus (MRSA) and scabies are taken very seriously at PDCI. Every suspected case is investigated without charging the inmate a co-pay for medical services. Inmates with suspected MRSA are monitored and immediately treated. Due to privacy concerns for health issues, other inmates are not informed when an inmate has MRSA or scabies.

When HSU is notified of a possible MRSA infection the affected inmate is called to the HSU for evaluation and Policy 716.02, Preventing Spread of Infectious Disease, is initiated. If the wound is draining, a culture will be obtained and sent to the hospital laboratory for culture processing. The inmate is started on antibiotics and taught ways to prevent the spreading of MRSA such as good hand washing, cleaning his room and shower and handling laundry. The wound is covered and the dressing is changed twice a day. The inmate cannot use recreation equipment or go to work. If the wound cannot be contained by dressings the inmate is confined to his unit with infection control measures in place until the wound is no longer draining.

Ectoparasites, such as scabies, are also evaluated by HSU personnel. If the laboratory test for scabies comes back positive, Policy 717.01, Ectoparasite Control, is initiated. The inmate continues to reside in his cell but is prescribed Permetherin cream. His cell is scrubbed and shoes, boots and beds are sprayed with Permetherin spray. The inmate's laundry is separated from the general laundry. The affected inmate is placed on a medical hold until he is given a clean bill of health.

On June 19, 2006 plaintiff was transferred to PDCI and placed in Unit 2. On July 5, 2006 plaintiff submitted a Health Services Request (HSR) stating that he had a bump on his left hip. He was seen in HSU on July 6, 2006. Staff noted red bump on upper left buttock with no red streak or drainage but with a possible insect bite area seen in the center of the area. Staff assessed that plaintiff was at risk for infection and placed a call to the on-call doctor. Pursuant to the doctor's orders a Bacracin gauze dressing was applied and covered with tegaderm dressing. Staff advised plaintiff to keep the dressing in place and he would be seen in three days.

On July 8, 2006 plaintiff requested to be seen in HSU because the dressing had been removed. He was seen in HSU on July 9, 2006. A culture was taken from the wound. Staff noted that the area was red and inflamed. The area was cleaned and a new dressing was applied. Plaintiff was prescribed 100mg of minocycline twice a day

for 10 days and advised of contact precautions. Plaintiff was restricted from recreation, work and school.

On July 10, 2006 plaintiff's dressing was changed and no drainage was noted. Band-aids were sent to the unit for plaintiff.

On July 12, 2006 plaintiff was seen in the HSU complaining of sores on his head. Staff noted 10-12 sores on his forehead and across his scalp. No drainage was noted. Plaintiff denied itching.

On July 13, 2006 the laboratory results from the July 9, 2006 culture indicated that plaintiff had staph aureus and not scabies or MRSA. He was advised of infection control precautions and informed that he could not work or use common recreation equipment.

Plaintiff was seen on the HSU on July 24, 2006 and released from his restrictions. Dr. Cox saw plaintiff on July 26, 2006 noting that he had sores on his scalp and low back caused by a staph infection not MRSA. Dr. Cox prescribed Bactram twice a day for two weeks, Bacitracin ointment to sores twice a day for two weeks and Betasept wash for one month.

On July 31, 2006 plaintiff was seen in the HSU. Staff noted that plaintiff had 5 lesions on his mid back and upper left hip with minimal redness and no drainage or swelling. Staff noted that they were healing and that the sores on his scalp were healed. One healed lesion on his scalp was surrounded by hair loss. Staff

informed plaintiff that this hair loss was temporary. Plaintiff was continued on antibiotics.

Plaintiff was seen in HSU on August 7, 2006. He reported that the sores on his back were itching. Plaintiff was given Betasept for his back sores. Plaintiff was seen again in the HSU on August 14, 2006. Staff noted 4 red spots on his back with minimal redness and no drainage. Dr. Cox saw plaintiff on August 22, 2006. Dr. Cox reported that the sores were better but continued him on the medications.

Plaintiff was seen in HSU on September 28, 2006. Staff noted 3 red scabbed sores on his mid back Plaintiff was prescribed antibiotic ointment and Betasept.

Plaintiff was seen by HSU staff 11 times from July 5, 2006 until September 28, 2006 for skin sores.

MEMORANDUM

Plaintiff was allowed to proceed on his Eighth Amendment deliberate indifference claim against the defendants. 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). Plaintiff must first show that he has a serious medical

need and that the defendant acted with deliberate indifference to his condition.

Plaintiff did not have a serious medical condition. Laboratory results indicated plaintiff had a staph infection on his skin and did not have either MRSA or scabies which are more serious conditions. Defendants were not deliberately indifferent to plaintiff's skin condition. Laboratory tests were performed. Plaintiff was seen 11 times in the HSU for his staph infection and he was prescribed antibiotics and ointments for his sores. The sores were healing with the treatment.

As a matter of law defendants are entitled to judgment in their favor on plaintiff's Eighth Amendment claim that they were deliberately indifferent to his serious medical need. Defendants' motion for summary judgment on this claim will be granted.

Plaintiff also claims that defendants were deliberately indifferent to his health by exposing him to scabies and other dangerous conditions. Deliberate indifference is a subjective standard which requires that the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. 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).

Defendants had policies in place to prevent the spread of infectious diseases such as MRSA and scabies. All cases of suspected infectious skin conditions were treated free of charges. Inmates were educated on ways of preventing the spread of infection. Inmates' cells were disinfected and the laundry of infected inmates was separated from the regular laundry. Defendants did not act with callous disregard to any known risk to plaintiff of scabies or other dangerous conditions.

Defendants are entitled to judgment as a matter of law on plaintiff's Eighth Amendment claim that they exposed him to scabies or other dangerous conditions. Defendants' motion for summary judgment on this claim will be granted.

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 motions to compel discovery and to quash defendants' motion for summary judgment are DENIED.

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

Shelley v. Bartels, et al., 06-C-479-S

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 29th day of December, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge