IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

ERIC R. WISE,

Plaintiff,

v.

MEMORANDUM and ORDER
07-cv-316-jcs

BRET REYNOLDS,

Defendant.

Plaintiff Eric Wise was allowed to proceed on his Eighth Amendment claim against defendant Bret Reynolds. In his complaint he alleges that while he was confined at the New Lisbon Correctional Institution defendant Reynolds denied him his prescription medications for a month which was deliberately indifferent to his serious medical need.

On October 1, 2007 defendant moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. On November 6, 2007 the above entitled matter was dismissed without prejudice subject to reopening upon the submission of plaintiff's response to defendant's motion. The matter was reopened on December 5, 2007. Defendant's motion for summary judgment has been fully briefed and is ready for decision.

Plaintiff moves to admit exhibits 10-12 into evidence. The Court will consider these exhibits in reaching its 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).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

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

Plaintiff Eric R. Wise was released from incarceration on July 31, 2007 but at all times material to this action was confined at the New Lisbon Correctional Institution, New Lisbon, Wisconsin (NLCI). Defendant Bret Reynolds is a Consultant Psychiatrist at NLCI who visits two days a week to provide 10-15 hours of psychiatric consultation.

Plaintiff was seen by consulting psychiatrist Dr. Leslie Gombus at Dodge Correctional Institution in October 2006. Dr. Gombus diagnosed him with Adjustment Disorder with Depressed Mood because plaintiff had complained of crying spells, difficulty with concentration, poor appetite and poor energy. Adjustment Disorder is not a severe mental illness.

On October 3, 2006 Dr. Gombus started plaintiff on a trial of Fluoxetine (Prozac), 20mg each day, and Trazodone, 100mg each night, for poor sleep. On October 30, 2006 Dr. Gombus noted that plaintiff's symptoms had improved, increased the Trazodone to 150 mg each night and recommended a follow-up appointment in 3 months.

Defendant Reynolds first met with plaintiff at NLCI on December 20, 2006 choosing to see him sooner than the three months recommended by Dr. Gombus. Plaintiff reported having a "rough time" given his particular crime but admitted that his symptoms were improved with the Fluoxetine. Dr. Reynolds recommended increasing the Fluoxetine dosage to 40 mg each day and encouraged plaintiff to work with the psychologist on mood issues. Dr.

Reynolds scheduled plaintiff for a follow-up appointment in 8 weeks.

On February 22, 2007 Dr. Reynolds met with plaintiff for a medication check and noted no improvement with the increased dose of Fluoxetine. Dr. Reynolds recommended increasing the dose to 60mg each day to see if it made a difference in plaintiff's subjective mood complaints. Dr. Reynolds scheduled plaintiff for a follow-up appointment in 5 weeks.

On March 29, 2007 plaintiff did not appear for his scheduled appointment with Dr. Reynolds. Dr. Reynolds concluded that plaintiff had made a conscious choice to skip his appointment. The unit officer informed Dr. Reynolds that plaintiff was not having any trouble on the unit and slept a lot.

Dr. Reynolds decided to end plaintiff's medication trial of Fluoxetine and Trazodone because he had experienced no dramatic mood improvement and was sleeping a lot. Dr. Reynolds decided to change plaintiff's treatment plan from a medication trial to one more focused on therapy with the psychology staff. He did not rule out trying medications in the future should the need arise.

On March 30, 2007 plaintiff completed two Health Service Requests demanding that his medications be restarted. On April 2, 2007 plaintiff submitted another Health Service request complaining of dizziness and sleep disturbance because his medications were discontinued. Plaintiff was evaluated by a nurse on April 3, 2007

who noted plaintiff's desire for Trazodone and his rapid heart rate and dilated pupils. This information was relayed to Dr. Reynolds for his review on April 4, 2007. Dr. Reynolds told plaintiff in April 2007 that his medications would not continue because he was not compliant with the treatment. The doctor advised plaintiff to work with the psychologists on his emotional issues.

In the early morning of April 5, 2007 plaintiff told officers on his unit that he was having chest pain. When he was brought to the HSU he complained about his medication being discontinued. He did not complain about chest pain to the nurse. The nurse found no acute medical problem and returned plaintiff to his unit recommending that he perform slow deep breathing.

On April 5, 2007 plaintiff came to the HSU complaining of extreme anxiety and demanded he see Dr. Reynolds. He was told to return to his unit and lie down. A psychologist was to see him.

On April 6, 2007 the HSU Manager discussed plaintiff's case with the Nursing Director at the Department of Corrections central office. The Mental Health Director Dr. Kallas and the Bureau of Health Service Director James Greer reviewed plaintiff's file and gave a verbal order to restart plaintiff's Fluoxetine and Trazodone on April 6, 2007 and to place plaintiff on Dr. Reynolds appointment list for April 11, 2007. When plaintiff was called to the HSU to resume his medications, he signed a form refusing the medication but did take the Trazodone at bedtime.

On April 11, 2007 Dr. Reynolds met with plaintiff and discussed his anxiety and multiple physical complaints. Plaintiff reported that he was doing fine after restarting the Trazodone. Dr. Reynolds discontinued the Fluoxetine order by Dr. Kallas because plaintiff did not want to take it and scheduled plaintiff for an appointment in 12 weeks.

On April 25, 2007 plaintiff saw Dr. Reynolds and requested he restart the Fluoxetine. Dr. Reynolds restarted plaintiff's Fluoxetine and scheduled him for an appointment in 4 weeks. On May 24, 2007 plaintiff met with Dr. Reynolds and advised him that he was taking the medications and they were helping him.

Based upon Dr. Reynold's professional judgment and expertise, and to a reasonable degree of medical certainty, plaintiff was provided with appropriate treatment.

MEMORANDUM

Plaintiff claims that defendant Bret Reynolds violated his Eighth Amendment rights by deliberate indifference to his serious mental health needs. The Eighth Amendment prohibits deliberate indifference to an inmate's serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976). 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).

Plaintiff had been diagnosed with Adjustment Disorder prior to his transfer to NLCI. This Adjustment Disorder was not a serious medical need. At NLCI Dr. Reynolds treated plaintiff's adjustment disorder by continuing to prescribe Fluoxetine and Trazodone for his use. When plaintiff did not keep his scheduled appointment with Dr. Reynolds on March 29, 2007 the doctor stopped plaintiff's medications. On April 6, 2007 the medications were restarted but plaintiff refused the Fluoxetine. On April 25, 2007 plainitf requested the Fluoxetine and it was restarted. Plaintiff was repeatedly seen by Dr. Reynolds while at NLCI.

Although plaintiff did not agree with Dr. Reynolds decision to stop his medications for a week, there is nothing in the record to suggest that this one week denial of plaintiff's medication constituted deliberate indifference. A disagreement over medical treatment does not rise to the level of an Eighth Amendment claim according to Estelle.

Plaintiff received treatment from Dr. Wise for his adjustment disorder. Further, there is no evidence that defendant knew that plaintiff was at risk of serious harm and acted with callous disregard to that risk. See Board v. Farnham, 394 F.3d 469, 478

(7th Cir. 2005). Defendant did not violate plaintiff's Eighth Amendment rights.

Defendant is entitled to judgment in his favor on plaintiff's Eighth Amendment claim. His motion for summary judgment 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 defendant's motion for summary judgment is GRANTED.

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

Entered this 19th day of December, 2007.

BY THE COURT:

/s/

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JOHN C. SHABAZ
District Judge