

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

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PETER OPPEHEER
CLERK US DIST COURT
WD OF WI

BOOKER T. SHIPP,
 plaintiff,

v.

17-cv-955-jdp

Dr. ROBERT HOBDAY,
 defendant,

VERIFIED CIVIL COMPLAINT FOR DAMAGES
with
JURY DEMAND

I. INTRODUCTION

This is a civil rights action filed by BOOKER T. SHIPP (herein "Shipp") a State prisoner, for damages under 42 U.S.C. § 1983, alleging Deliberate Indifference to serious medical need in violation of the Eight Amendment to the United States Constitution. The plaintiff Shipp. also alleges the State Tort of Negligence.

II. JURISDICTION

- 1) This court has jurisdiction over the plaintiff's claims of violation of Federal Constitutional Rights under 42 U.S.C. §§ 1331(1) and 1343.
- 2) This court has supplemental jurisdiction over the plaintiff's State Tort claims of Negligence under 28 U.S.C. § 1367.

III. PARTIES

- 3) The plaintiff, Shipp, was incarcerated at New Lisbon Correctional Institution (herein NLCI) at all times relevant during the events in this complaint.
- 4) The defendant, Dr. Robert Hobday (herein Dr. Hobday) was employed as dentist at NLCI at all times relevant during the events in this complaint. Dr. Hobday is sued in his individual capacity.
- 5) The defendant, Dr. Hobday at all times relevant acted under color of State law in this complaint.

IV. EXHAUSTION OF REMEDIES

6) The plaintiff, Shipp, has exhausted all available remedies before filing this complaint.

V. FACTS

7) On December 29, 2016, the plaintiff Shipp went to Dr. Hobday here at NLCI, to have a lower left molar extracted.

8) On January 2, 2017, the plaintiff Shipp submits a Dental Service Request to the dentist saying, "I had a molar pulled last week Thursday my jaw feels broken! I am in constant pain".

9) On January 2, 2017, the plaintiff Shipp submits a Health Service Request to the medical unit saying, "I had a molar pulled last week Thursday, and I am still in extreme pain".

10) On January 4, 2017, the plaintiff submits a Dental Service Request to the dental office saying, ".... still having extreme pain at extraction site pain keeps me up all night".

11) On January 3, 2017, the plaintiff submits a Dental Service Request to the dental office complaining about the ineffective treatment he was receiving for a "Dry-Socket" (it should be noted that the plaintiff Shipp in fact did not have a Dry-Socket at all). In this Dental Service Request the plaintiff Shipp states, "Dr. Hobday put a solution on the site of my molar extraction to stop a Dry Socket. However, I am still experiencing level 8-9 pain, the solution did not work".

12) On January 8, 2017, the plaintiff Shipp submits a Dental Service Request to the dental office saying, "Can you please see me when you get a moment, still in pain".

13) On January 10, 2017, the plaintiff Shipp submits a Dental Service Request to the dental office saying, "I ran out of the Paroex (antiseptic) mouthwash. Can you please send another bottle, because I still have a open wound that could get infected".

14) **On March 28, 2017, the plaintiff Shipp submits a Dental Service Request to the dental office stating that the open wound at the extraction site (see FACTS #13) has gotten severely infected ".... and I am in extreme pain, and it is swollen-up". (**It should be noted, that the date on this Dental Service Request should be March 26, 2017. I inadvertently had my days mixed-up when I sent this Dental Request, because I was seen by Dr. Hobday on March 27, 2017. This error should be deemed harmless, because it does not change the circumstances in anyway).

15) On March 27, 2017, I was seen by Dr. Hobday and he examined my severely infected gum-line. On this date Dr. Hobday wrote in my medical file, "LL ext site - feels like something is in it".

16) On April 9, 2017, the plaintiff Shipp submits a letter to the Health Service Unit Manager (Mrs. Candace Warner), stating the plaintiff Shipp still has an open wound at the extraction site, that the treatment for the Dry-Socket did not work, and that the open wound was not healing.

17) On April 18, 2017, the plaintiff Shipp submits a letter to the H.S.U. Manager, and submits a Health Service Request to H.S.U. stating, "I have discovered a tooth fragment still embedded in my gum-line after 4 months of having a molar extracted ..."

18) On April 19, 2017, the plaintiff was examined by the H.S.U. Manager Mrs. Candace Warner RN. During this examination, the H.S.U. Manager Candace Warner writes in her Medical Report, "....can see piece of tooth appears to be embedded in gum tissue swelling at site piece of tooth from prior extraction remains in gum tissue swelling at site"

19) On April 19, 2017, the plaintiff Shipp was also examined by H.S.U. nurse T. Hentz RN. During this examination R.N. Hentz writes in his Medical Report, "....hard substance appears to be partial tooth remaining in gum-line irritation noted at site".

20) On April 20, 2017, the plaintiff Shipp was seen by Dr. Hobday, and on this day Dr. Hobday re-cut open Shipp's gum-line, drilled at the extraction site, pulled out the

remaining tooth with dental pliers to surgically remove the remaining portion of tooth that was leftover from the first tooth extraction on December 29, 2016. The plaintiff Shipp was forced to endure another 4 days of intense pain because of this second procedure to remove the remaining portion of tooth.

CLAIM FOR RELIEF #1 - DELIBERATE INDIFFERENCE

21) Dr. Hobday knew that something abnormal was in Shipp's extraction site when he wrote in Shipp's Medical Files on March 27, 2017, "LL ext site - feels like something is in it". Dr. Hobday does not take an X-Ray to see what was in his suffering patient's gum-line constituted deliberate indifference to Shipp's serious medical need (see FACT#15).

22) The defendant, Dr. Hobday knew that the plaintiff Shipp had a raw, and opening wound at the extraction site for 4 months (see FACTS #13 & #14).

23) Defendant Dr. Hobday, was deliberately indifferent to Shipp's serious medical need when he failed to perform the appropriate diagnostic tests (X-Ray), because Shipp's symptoms of raw, painful, unhealing open wound called for a simple X-Ray. An X-Ray would have shown the partial tooth beneath the gum-line, and this would have saved Shipp from months of pain & suffering. Dr. Hobday had easy access to X-Ray machine in the dental office. Dr. Hobday's failure to conduct an adequate examination resulted in prolonged pain & suffering, sleepless nights, weight loss (from not eating), and emotional pain.

24) Dr. Hobday, was deliberately indifferent to Shipp's serious medical needs by continuing to pursue an ineffective course of treatment in response to Shipp's 4 month raw open wound at extraction site.

25) Dr. Hobday, was deliberately indifferent to Shipp's serious medical need when he refused to dispense Paroex (antiseptic) mouthwash on January 10, 2017, for raw open wound, despite Shipp's concerns that wound could get infected (see FACTS #13 & #14). Shipp's worries of infection does in fact come to reality, when Shipp contracts a Major infection at extraction site.

CLAIM FOR RELIEF #2 - NEGLIGENCE

26) Defendant Dr. Hobday, owed plaintiff Shipp a duty of care that is the same as that to a private patients. Dr. Hobday breached that duty of care when he extracted only a portion of Shipp's lower-left molar.

27) Defendant Dr. Hobday also breached the duty of care by failing to perform the appropriate diagnostic test (taking an X-Ray of extraction site), which would have revealed the remaining tooth months earlier, and saved Shipp unnecessary prolonged pain and suffering. Furthermore Shipp would have never gotten a serious infection. Plaintiff Shipp wrote numerous dental request complaining of pain, Dr. Hobday should have X-Rayed site.

28) Because of Dr. Hobday's breach of duty, plaintiff Shipp was forced to unnecessarily endure months of debilitating pain, sleepless nights, loss of weight from not eating, emotional suffering, and a major infection which could have been deadly.

29) Plaintiff Shipp's injuries was proximately caused by Dr. Hobday's breach of duty.

RELIEF REQUESTED

WHEREFORE, plaintiff requests that this court grant the following relief:

A) Declare that the defendant, Dr. Robert Hobday, violated plaintiff Shipp's Eight Amendment rights when he did not give Shipp an X-Ray of extraction site, then writing in Shipp's medical file, ".... feels like something is it".

B) Declare that defendant Dr. Hobday violated plaintiff Shipp's Eight Amendment rights when he failed to perform appropriate diagnostic test (X-Ray), while continuing to pursue an ineffective course of treatment in response to Shipp's raw and unhealing gum-line. Because Shipp had symptoms that should have told Dr. Hobday to perform an X-Ray.

C) Declare that defendant Dr. Hobday violated Shipp's Eight Amendment Rights when he failed to dispense antiseptic mouthwash to prevent infection of known open wound at

extraction site, despite Shipp's request & concerns that open wound could get infected.

D) Declare that the defendant Dr. Hobday was Negligent when he extracted only a portion of Shipp's lower-left molar, leaving a fragment of the tooth. This directly lead to a severe infection of Shipp's gum-line.

E) Declare that Dr. Hobday was Negligent for not dispensing antiseptic for open wound in gum-line, causing Shipp to contract a major infection at extraction site.

F) Award compensatory damages in the amount of \$15,000 against the defendant Dr. Robert Hobday for physical and emotional injuries suffered by the plaintiff Shipp.

G) Award punitive damages in the amount of \$15,000 against the defendant Dr. Hobday for the pattern of being Deliberately Indifferent to Shipp's (and others) serious medical needs (see the case of, Payette v. Hobday, 2016).

H) Grant plaintiff Shipp all court costs & fees spent filing this lawsuit.

I) Grant plaintiff Shipp attorney fees in the event that counsel is appointed.

J) Grant plaintiff Shipp all other relief that it may appear plaintiff Shipp is entitled.

Dated this day of, 12/19/2017

X Booker T. Shipp

BOOKER T. SHIPP #292215
New Lisbon Correctional Institution
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New Lisbon, WI 53950-4000

I, Booker T. Shipp, have read the foregoing complaint and hereby verify that the matters alleged therein are true. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.