

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES SMITH, SR.)
)
Plaintiff,)
)
v.) Civil Action No. 97-689-SLR
)
DR. OSTRUM and DR. IVENS of)
Prison Health Services, Inc.)
and PRISON HEALTH SERVICES, INC.)
)
Defendants.)

James Smith, Sr., Wilmington, Delaware, pro se.

Francis J. Jones, Jr., Esquire of Morris, James, Hitchens &
Williams LLP, Wilmington, Delaware. Counsel for defendant Dr.
Ostrum.

MEMORANDUM OPINION

Dated: May 30, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff James Smith, Sr. filed this Section 1983 action on December 22, 1997, alleging that defendants Dr. Ostrum and Dr. Ivens of Prison Health Services, and Prison Health Services, Inc. ("PHS") denied him adequate medical care in violation of the Eighth Amendment. Plaintiff is an inmate at the Multipurpose Criminal Justice Facility ("Gander Hill") in Wilmington, Delaware. On June 29, 2000, the court dismissed defendants Dr. Ivens and PHS from the action, and because Dr. Ostrum did not answer plaintiff's complaint, entered a default in appearance against Dr. Ostrum. (D.I. 22) On July 11, 2000, the court granted Dr. Ostrum's motion to set aside the default (D.I. 25), and Dr. Ostrum subsequently filed an answer to plaintiff's amended complaint. (D.I. 28) Currently before the court is Dr. Ostrum's motion for summary judgment (D.I. 29), to which plaintiff has not responded. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. For the following reasons, the court shall grant Dr. Ostrum's motion.

II. BACKGROUND

Plaintiff's claim arises out of medical treatment that was prescribed by defendants at Gander Hill. The following facts are taken from plaintiff's complaint as alleged against Dr. Ostrum.

Plaintiff claims, without supporting evidence, that in 1996 he suffered a heart attack and was advised that he needed a heart

transplant. (D.I. 4; D.I. 5 at 4) Plaintiff further contends, without supporting evidence, that in 1997, Dr. Ostrum discontinued plaintiff's heart medication and terminated his diabetic snack privileges.¹ (D.I. 5 at 3) As a result, plaintiff allegedly suffered chest discomfort and numbness in the left side of his body. (D.I. 19, Ex. B at 100) Plaintiff complained about Dr. Ostrum's alleged misconduct by filing a medical grievance form with the prison on August 14, 1997 in which he stated:

[I am a] diabetic, I have a heart condition. I also have asthma and arthritis. I also have a liver condition. I had a major heart attack on 6/21/96. [In] April, Dr. Ostrum refused to give me proper medical treatment, and discontinue[d] all of the medications that I need. Dr. Ostrum also stopped my evening diabetic snack. Now, I am having a lost of chest discomfort, numb[ness] on the left shoulder, arm, and side. Tightness and squeezing pain.

(D.I. 4 at 7) The prison records reveal that plaintiff had visited the mental health department and complained of anxiety over the modification of his medication. (D.I. 19, Ex. B at 100)

Plaintiff continued to complain about chest pains and recurring chest problems. An echocardiogram performed on October

¹According to plaintiff's medical records, Dr. Ostrum first examined plaintiff on March 28, 1997, and last saw plaintiff on April 1, 1998. During this period, Dr. Ostrum examined plaintiff approximately six to eight times. (D.I. 29, Ex. B) Dr. Ostrum admits that plaintiff's heart medication was periodically changed, but never stopped. (D.I. 29, Ex. C) Furthermore, Dr. Ostrum claims that when he was medical director at Gander Hill, he made a medical decision to stop all diabetic snacks for all patients whether the patients were on diabetic medication or not. Plaintiff was never on any diabetic medication. (Id.)

7, 1998 indicated that plaintiff could tolerate reasonable exercise. (D.I. 19, Ex. B at 20-24) Plaintiff's medical records reveal that plaintiff visited the prison clinic on November 16, 1998 to discuss the results of his echocardiogram. While there, plaintiff denied any cardiovascular problems, became agitated, and departed the clinic without any explanation. (D.I. 19, Ex. B at 89)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine

issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

To withstand summary judgment on an Eighth Amendment claim, plaintiff must demonstrate that Dr. Ostrum acted with deliberate indifference towards plaintiff's serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). See also West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978) ("This standard is two-pronged. It requires deliberate indifference on the part of prison officials and it requires the prisoner's medical needs to be serious."). Deliberate indifference is demonstrated when "prison authorities prevent an inmate from receiving recommended

treatment for serious medical needs or deny access to a physician capable of evaluating the need for such treatment." Monmouth County Corral. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). A prison official can be found to have violated an inmate's Eighth Amendment rights only if the official

knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer v. Brennan, 511 U.S. 825, 837 (1994). A medical need is "serious" if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979), aff'd, 649 F.2d 860 (3d Cir. 1981).

In the case at bar, plaintiff appears to suffer from coronary artery disease, which can be classified as a serious medical condition. (D.I. 19, Ex. B at 21) However, there is no evidence to indicate that Dr. Ostrum acted with deliberate indifference towards plaintiff's medical needs. The record reflects that plaintiff's heart medication was never stopped, but adjusted according to plaintiff's changing medical condition. Furthermore, Dr. Ostrum's decision to stop serving diabetic snacks to all patients is hardly "deliberate indifference" towards plaintiff, who was not taking any diabetic medication. Based on the record presented, the court finds no genuine issue

of material fact as to plaintiff's Section 1983 claim against Dr. Ostrum. Therefore, Dr. Ostrum's motion for summary judgment is granted.

V. CONCLUSION

For the reasons stated, Dr. Ostrum's motion for summary judgment is granted. An appropriate order shall issue.

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 Prison Health Services, Inc.)
 and PRISON HEALTH SERVICES, INC.)
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 Defendants.)

O R D E R

At Wilmington, this 30th day of May, 2001, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant Dr. Ostrum's motion for summary judgment (D.I. 29) is granted.
2. The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendant Dr. Ostrum after thirty days, during which time plaintiff may respond to the court's decision.

United States District Court