


ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Virgil R. Morris, Jr., a pro se litigant proceeding in forma pauperis, filed this action on January 11, 2002 pursuant to 42 U.S.C. § 1983,¹ alleging violations of the Eighth and Fourteenth Amendments by defendants, the Honorable Richard F. Stokes,² Superior Court Judge in Sussex County; Dr. Roberta Burns ("defendant Burns"); and Suesann Rickards ("defendant Rickards"). Presently before the court is a motion for summary judgment filed by defendants Burns and Rickards.³

¹ Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

² On March 18, 2004, Judge Stokes was dismissed as a defendant in this case. (D.I. 23)

³ According to the amended scheduling order governing this case, defendants had until September 24, 2004 to file summary judgment motions, and plaintiff had until October 25, 2004 to file an answering brief. (D.I. 27) On September 24, 2004, defendants filed a motion for summary judgment. (D.I. 30) Plaintiff has yet to file an answering brief to defendants' motion for summary judgment and has not communicated with the court since February 26, 2004. Defendants filed a motion to treat defendants' motion for summary judgment as unopposed. (D.I. 31) The court denies defendants' motion to treat their summary judgment motion as unopposed, and addresses the merits of each parties' arguments through this order.

(D.I. 30) For the reasons set forth below, the court grants defendants' motion for summary judgment.

II. BACKGROUND

Plaintiff was convicted of driving under the influence of alcohol. On July 6, 2001, Judge Stokes sentenced plaintiff to a mandatory minimum six months term of incarceration and ordered plaintiff to participate in the Key Program.⁴ (D.I. 16, ex. 1) Plaintiff was incarcerated at the Sussex Correctional Institution ("SCI") in Georgetown, Delaware.⁵ (D.I. 5)

Defendant Burns, at all times relevant to this action, was a physician duly licensed in the State of Delaware. (D.I. 30 at 2) The court infers from the complaint and the motion for summary judgment that defendant Burns worked as a physician at SCI.

(D.I. 2, 30) Defendant Rickards was the administrator of the Key Program at SCI. (D.I. 30 at 2) At no time did defendant Rickards administer medical care to the plaintiff. (Id.)

On July 9, 2001, plaintiff was admitted to SCI. (Id. at 6) Defendant Burns examined plaintiff upon his admittance to SCI. (Id.) Plaintiff claims that on July 9th, defendant Burns "could have easily disqualified plaintiff from participating in the Key Program for medical [reasons]" (D.I. 2 at 4) Although

⁴ The Key Program is a substance abuse treatment program with a basic self-help therapeutic community approach. (D.I. 16 at 3)

⁵ Plaintiff is no longer incarcerated at SCI. (D.I. 6)

defendant Burns did not excuse plaintiff from participating in the Key Program, she did prescribe permanent special accommodations plus restrictions on plaintiff's activities in the Key Program, including: (1) entitlement to a bottom bunk on the ground floor; (2) providing plaintiff with brown chairs with back support; (3) prohibiting plaintiff from bending or lifting more than ten pounds; and (4) limiting plaintiff to fifteen minutes of standing in any hour.⁶ (D.I. 30, ex. C)

Plaintiff contends that on July 19, 2001, he suffered severe angina attacks as a direct result of his mandatory participation in the Key Program. (D.I. 2 at 4) On August 31, 2001, plaintiff informed defendant Burns that he experienced chest pain while in the Key Program. (Id.) According to plaintiff, defendant Burns initially claimed that she could not issue medical leave because it was against defendant Rickards' policy. (Id.) Later that day, however, defendant Burns gave plaintiff a medical waiver excusing him from the Key Program. (Id.; D.I. 30, ex. E)

Plaintiff contends that the defendants acted with deliberate indifference to his serious medical condition, and that their conduct "caused possible heart damage and the risk of serious physical injury and the unnecessary and wanton infliction of pain and suffering proscribed by the Eighth Amendment." (D.I. 2 at 4)

⁶ Defendant Burns also prescribed use of a brace on plaintiff's left ankle for a period of six weeks. (D.I. 30, ex. C)

Plaintiff seeks both injunctive relief and money damages.⁷

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

⁷ As plaintiff is no longer incarcerated in a Delaware correctional facility, any claim he might have had for injunctive relief is moot.

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

In order to state a claim under § 1983, a plaintiff must allege: (1) a person, acting under color of state law; (2) deprived plaintiff of a federal right. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). Therefore, in order to survive defendants' motion for summary judgment, plaintiff must show that there is a genuine issue of material fact that a state actor deprived plaintiff of a federal right.

A. State Actor

There is no genuine issue of material fact that defendants are state actors. In West v. Atkins the Supreme Court held: "Respondent, as a physician employed by North Carolina^[8] to

⁸ In Atkins the defendant physician was "a private physician under contract with North Carolina to provide orthopedic services at a state-prison hospital on a part-time basis" 487

provide medical services to state prison inmates, acted under color of state law for purposes of § 1983 when undertaking his duties in treating petitioner's injury. Such conduct is fairly attributable to the State." 487 U.S. 42, 54 (1988). It is clear that defendant Burns provided some sort of medical services to state prison inmates, making her a state actor. Defendant Rickards indicated that she "was the administrator of the Key Program at SCI." (D.I. 30 at 2) Consequently, defendant Rickards was also a state actor.

B. Deprivation of a Federal Right

The State of Delaware has an obligation to provide "adequate medical care" to the individuals who are incarcerated in its prisons. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (citations omitted). To demonstrate a violation of the Eighth Amendment right to adequate medical care, plaintiff must establish "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Thus, plaintiff must demonstrate that: (1) he had a serious medical need;⁹ and

U.S. at 42.

⁹ For purposes of their motion for summary judgment, defendants concede that plaintiff's medical conditions satisfy the "serious medical need" requirement of Estelle. (D.I. 30 at 4)

(2) defendants were aware of this need and were deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987).

"It is well-settled that claims of negligence or medical malpractice, without some more culpable state of mind, do not constitute 'deliberate indifference.'" Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999); see also Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993) ("[T]he law is clear that simple medical malpractice is insufficient to present a constitutional violation."). Deliberate indifference is a "subjective standard of liability consistent with recklessness as that term is defined in criminal law.'" Natale v. Camden County Corr. Facility, 318 F.3d 575 (3d Cir. 2003) (citing Nincini v. Morra, 212 F.3d 798, 811 (3d Cir. 2000)). In Farmer v. Brennan, the Supreme Court held that a prison official displays deliberate indifference if the official "knows of and disregards an excessive risk to inmate health or safety." 511 U.S. 825, 837 (1994). The official must be "both [] aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and . . . draw the inference." Id. In the context of claims for inadequate medical care, the Third Circuit has found deliberate indifference where there was "objective evidence that [a] plaintiff had serious need for medical care," and prison

officials ignored that evidence. Nicini, 212 F.3d at 815 n.14. The Third Circuit also found deliberate indifference in situations where "necessary medical treatment is delayed for non-medical reasons." Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (citing Ancata v. Prison Health Servs., 769 F.2d 700, 704 (11th Cir. 1985)).

The evidence presented in this case clearly shows that defendant Burns did not have a deliberate indifference for plaintiff's serious medical needs. July 9, 2001 is the first day which plaintiff claims defendant Burns displayed deliberate indifference. (D.I. 2 at 4) Defendant Burns clearly knew of plaintiff's condition on July 9th since, upon plaintiff's arrival at SCI, defendant Burns noted his cardiac condition and reviewed an EKG of plaintiff. (D.I. 30, ex. F) Defendant Burns prescribed several special accommodations for plaintiff. (D.I. 30, ex. C) When defendant Burns learned of plaintiff's alleged severe angina attacks, she excused plaintiff from the Key Program. (D.I. 30, ex. E) Consequently, defendant Burns did not display deliberate indifference towards plaintiff's serious medical condition.¹⁰

¹⁰ Plaintiff also claims that defendant "Burns refused to prescribe plaintiff his regular [medications] causing him unnecessary pain and discomfort." (D.I. 2 at 4) Plaintiff does not indicate which medications defendant Burns did not prescribe, or the ailments these medications treated. However, the record does indicate that defendant Burns prescribed several medications for plaintiff, including: nitroglycerin, Motrin, Robaxin,

Plaintiff's sole claim against defendant Rickards is that defendant Rickards' "policy" prevented defendant Burns from excusing plaintiff from the Key Program. (D.I. 2 at 4) Suesann Rickards was the administrator of the Key Program at SCI. She was not a medical provider and had no apparent supervisory authority over defendant Burns. Furthermore, defendant Rickards' alleged policy could not have prohibited defendant Burns from excusing plaintiff from the Key Program, since defendant Burns eventually did excuse plaintiff from the program. Thus, defendant Rickards and her alleged policy could not have affected defendant Burns' medical decisions. The court concludes that defendant Rickards did not display a deliberate indifference towards plaintiff's serious medical needs.

V. CONCLUSION

For the reasons set forth above, the court grants defendants' motion for summary judgment. (D.I. 30) An appropriate order shall issue.

Tenormin, Norvasc, Lescol, Zantac, aspirin, and acetaminophen. (D.I. 30, ex. F) The court concludes that defendant Burns was not deliberately indifferent to plaintiff's medication needs.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

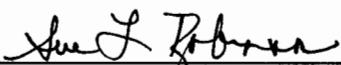
VIRGIL R. MORRIS, JR.,)
)
 Plaintiff,)
)
 v.) Civ. No. 02-026-SLR
)
ROBERTA BURNS and SUESANN)
RICKARDS,)
)
 Defendants.)

O R D E R

At Wilmington, this ~~29th~~ day of March, 2005, consistent with the memorandum opinion issued this same date;

IT IS ORDERED that:

1. Defendants' motion for summary judgment (D.I. 30) is granted.
2. The Clerk of Court is directed to enter judgment in favor of defendants and against plaintiff.



United States District Judge