

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAPHUS ELEY,)
)
 Plaintiff,)
)
 v.) Civ. No. 02-362-SLR
)
 RICK KEARNEY, M. DELOY,)
 PHILLIP TOWNSON, SGT. JOHN)
 DOE, LT. JOHN DOE, GOSNELL,)
 C/O ANSON, CPL., CORRECTIONAL)
 MEDICAL SERVICES, DR. IVENS,)
 SUESANE RICHARDS, GEORGIA)
 PERDUE, DR. BURNS, STATE OF)
 DELAWARE, SCI, MEDICAL)
 ADMINISTRATOR, and MIKE DELOY,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington this 31st of January, 2005, having reviewed defendant Roberta F. Burns' ("defendant Burns")¹ motion to dismiss (D.I. 59), and the memoranda submitted therewith;

IT IS ORDERED that defendant's motion (D.I. 59) is denied for the reasons that follow:

I. INTRODUCTION

On May 1, 2002 Raphus Eley, a pro se plaintiff proceeding in forma pauperis, filed the present action against defendants Rick

¹ Defendant Burns indicated in her motion to dismiss that she is Roberta F. Burns, M.D., and that she was improperly designated "Dr. Burns." Nevertheless, for ease of reading and because it is not inaccurate, the court may refer to her as Dr. Burns in this order.

Kearney, Mike Deloy, Carl Anson, William Gosnell, Philip Townsend, Suesane Richards, Georgia Perdue, Dr. Ivens, Dr. Burns, Correctional Medical Services, Sussex Correctional Institution, and the State of Delaware. (D.I. 2) The events which gave rise to this action took place at Sussex Correctional Institution, where plaintiff was formerly an inmate. In his complaint plaintiff alleges that, pursuant to 42 U.S.C. § 1983² ("Section 1983"), defendants violated plaintiff's Eighth Amendment rights by: (1) "ignored a known hazard" which caused plaintiff to fall down a flight of stairs and injure his back; and (2) denying plaintiff medical care "on or about November 26, 1999." (D.I. 2) In his first amended complaint plaintiff alleges, inter alia, that he was denied surgery to repair his back because he did not have enough time left on his sentence. (D.I. 6) The court has jurisdiction over the present matter pursuant to 28 U.S.C. § 1331. Presently before the court is defendant Burns' motion to dismiss plaintiff's complaint. (D.I. 59) For the reasons set

² 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

42 U.S.C. § 1983 (2004).

forth below, the court denies defendant Burns' motion to dismiss.

II. BACKGROUND

Plaintiff was an inmate at Sussex Correctional Institution ("SCI") at the time of his alleged injury. (D.I. 2) According to the allegations of the complaint, on September 16, 1999 plaintiff exited his cell at SCI for morning recreation only to slip on rainwater that had accumulated at the top of a flight of stairs. (Id.) Plaintiff fell down the flight of stairs and injured his back. (Id.) On October 8, 1999 plaintiff filed a general grievance with SCI's pre-trial unit, describing his fall and complaining of "severe back trauma due to this [m]ost tragic accident." (Id., ex. A) On November 27, 1999 plaintiff filed a medical grievance with SCI. (Id., ex. B) In this second grievance, plaintiff complained that "[o]n about November 26, 1999, I was call[ed] to sick call at about 12:30, when I entered the nurses['] office she stated[,] ["]hear [sic] you are again Mr. Eley complaining about your back pains again[.] [T]here's nothing we can do for you or give you to help you with your problem [M]y point is this Nurse Deborah is very rude and disrespectful, I feel her only concern as a[] nurse [] is care . . . of the sick." (Id.) On March 20, 2001 plaintiff filed a third grievance, this time complaining that he was a "chronic client with severe back injury" and that "one of your nur[s]es charge me . . . four dollar[es] for initial visit . . .

." (Id.) This third grievance was addressed by defendants in an informal resolution. (Id.)

On May 1, 2002 plaintiff filed a complaint in this court alleging two "prongs": (1) that defendants "ignored a known hazard that threatened life and limb"; and (2) defendants denied medical care to plaintiff on November 26, 1999. (Id.) Plaintiff also indicated that he had filed grievances and that, even after several months, he had still not received responses to these grievances. (Id.)

On May 21, 2003 plaintiff filed his first amended complaint ("FAC"). (D.I. 6) In his FAC, plaintiff stated that, "[o]n about the year 2001 being incarcerated at, . . . SCI [plaintiff] was transported to [Beebe] Medical Center for [an] M.R.I[.] and X[-]Ray[.]s on his spine which [indicated] . . . that he had [.] sever[e] spine damage of the L3[,] L4[,] L5 and S1 lower lumber. The doctor examine[d] and we talk[ed] about the opinion[.] [W]e decided, on surgery to correct the damage" (D.I. 6) Plaintiff also alleged, "[a]pprox[imately] around July or Augu[.]st the medical doctor here at [SCI] approved of the surgery Dr. Burns and she deferr[ed] her approv[a]ll with C.M.S[.] and Dr[.] Ivens" (Id.) "About 3 week[.]s late[r] [plaintiff] was called to medical department to see Dr[.] Ivens and he [gave] me a spinal injection for the pain[.] [A]fter that he told me there was not going to be any surgery. I ask[ed] Dr[.] Ivens

why, and he stated[] that I didn[']t have enough time left on my sentence at this point." (Id.) Plaintiff claims in his FAC that upon his release from prison, he obtained insurance and had the surgery performed by a private doctor. (Id.) However, plaintiff missed three probation appointments after his surgery and was sent back to prison on November 15, 2002. (Id.) In his FAC, plaintiff has alleged that his medical condition is very serious and, if not treated, will affect his everyday activities. (Id.) Plaintiff claims that defendants' failure to provide physical therapy puts him at risk of permanent disability, and violates plaintiff's Eighth Amendment rights. (Id.)

III. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson,

355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

IV. DISCUSSION

Defendant Burns makes three separate arguments for dismissal of plaintiff's complaint against her. First, she claims that plaintiff failed to exhaust available administrative remedies, as required by 42 U.S.C. § 1997e(a). (Id.) Second, she claims that plaintiff's complaint is time-barred by the statute of limitations. (Id.) Third, she claims that plaintiff has failed to state a claim upon which relief may be granted. (D.I. 59)

A. Administrative Remedies

Defendant Burns argues in her motion to dismiss that plaintiff did not exhaust available administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). (D.I. 59) Before filing a civil action, a plaintiff-inmate must exhaust his administrative remedies, even if the ultimate relief sought is not available through the administrative process. See Booth v. Churner, 206 F.3d 289, 300

(3d Cir. 2000), aff'd, 532 U.S. 731. See also Ahmed v. Sromovski, 103 F. Supp. 2d 838, 843 (E.D. Pa. 2000) (quoting Nyhuis v. Reno, 204 F.3d 65, 73 (3d Cir. 2000) (stating that § 1997e(a) "specifically mandated that inmate-plaintiffs exhaust their available administrative remedies.")). In the case at bar, although the entire medical grievance procedure may not have been completed, plaintiff sufficiently pursued his administrative remedies by filing three grievance forms. (D.I. 2, ex. A, ex. B) Plaintiff provided evidence to suggest that defendants responded to one of these three grievances, but this particular grievance related to a tangential issue of copayments for treatment. (D.I. 2, ex. B) The remaining two grievances were not addressed by defendants, at least as reflected by the record at bar. The court rejects defendant Burns' motion to dismiss for failure to exhaust available administrative remedies.

B. Statute of Limitations

For statute of limitations purposes, Section 1983 claims are characterized as personal injury claims. See Wilson v. Garcia, 471 U.S. 261, 275 (1985). Courts apply the state statute of limitations for personal injury claims in order to determine the statute of limitations period. See id. Thus, in Delaware, Section 1983 claims are subject to the two-year statute of limitations period defined in 10 Del. C. § 8119. See McDowell v. Delaware State Police, 88 F.3d 188, 190 (3d Cir. 1996); see also

Gibbs v. Deckers, 234 F. Supp. 2d 458, 461 (D. Del. 2002). A Section 1983 claim accrues "when a plaintiff knows or has reason to know of the injury that forms the basis of his or her cause of action." Johnson v. Cullen, 925 F. Supp. 244, 248 (D. Del. 1996).

Defendant Burns argues in her motion to dismiss that plaintiff's September 20, 1999 and November 27, 1999 grievances were both submitted about two and one half years prior to the May 1, 2002 filing of this action. (D.I. 59) Defendant Burns argues that, based on this information, plaintiff knew or had reason to know of any injury arising from these incidents more than two years before initiating the present action. (Id.) Consequently, plaintiff's action would be barred by the applicable statute of limitations. (Id.) This argument is flawed, however, because the actions by defendant Burns which plaintiff alleges violated his Eighth Amendment rights arose not at the time of the grievances, but much later when defendant Burns examined plaintiff, decided surgery was appropriate and, nevertheless, did not ensure that surgery was performed. According to plaintiff, these actions by defendant Burns occurred in July or August of 2001. (D.I. 6) Consequently, plaintiff's claim against defendant Burns is not barred by the statute of limitations.

C. Failure to State a Claim

In order to state a claim under Section 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).

1. State actor

In West v. Atkins the Supreme Court held: "Respondent, as a physician employed by North Carolina³ to 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) (footnote added).

Plaintiff's complaint sufficiently alleges that defendant Burns was a physician working with the State to provide medical services to inmates. (D.I. 6) Consequently, plaintiff has adequately claimed that defendant was a state actor.

2. Denial 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 state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to

³ 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 U.S. at 42.

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). Plaintiff must demonstrate: (1) that he had a serious medical need; and (2) that the defendant was aware of this need and was 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). Either actual intent or recklessness will afford an adequate basis to show deliberate indifference. See Estelle, 429 U.S. at 105.

The seriousness of a medical need may be demonstrated by showing that the need 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.” Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J.1979)). Moreover, “where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious.” Id.

Plaintiff has claimed that he had a serious medical condition. First, plaintiff's FAC claims that his injury was serious and that, if this injury is not treated, it will affect everyday activities and cause significant disruption in his life. (D.I. 6) Furthermore, plaintiff's FAC also claims that Dr. Burns

and Dr. Ivens both agreed that plaintiff's condition was serious enough to require surgery to correct the defect. (Id.) Thus, plaintiff has stated a claim which sufficiently alleges that he had a serious medical need.

As to the second requirement for a claim under Section 1983, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. Lanzaro, 834 F.2d at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons. Id. at 347. An official's conduct, however, does not constitute deliberate indifference unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can 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). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842. The law is clear that mere medical

malpractice is insufficient to present a constitutional violation. See Estelle, 429 U.S. at 106; Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993). Prison authorities are given extensive liberty in the treatment of prisoners. See Inmates of Allegheny County Jail, 612 F.2d at 762; see also White, 897 F.2d at 110. The proper forum for a medical malpractice claim is in state court under the applicable tort law. See Estelle, 429 U.S. at 107.

Plaintiff claims in his FAC that defendant Burns displayed deliberate indifference. According to plaintiff's FAC, Dr. Burns believed that surgery was appropriate for plaintiff's condition. (D.I. 6) However, Dr. Burns deferred her decision to Dr. Ivens. (Id.) According to plaintiff's complaint, surgery was not performed because there was not enough time left on plaintiff's sentence. (Id.) Consequently, plaintiff has alleged defendant Burns: (1) knew of plaintiff's condition; (2) thought plaintiff's condition was serious enough to warrant surgery; (3) did not perform the surgery because of non-medical reasons, namely that plaintiff did not have enough time left on his sentence. Furthermore, plaintiff alleged that because surgery was not performed during his incarceration, plaintiff "left prison suffering in severe and acute pain." (D.I. 6) Thus, plaintiff has alleged that defendant Burns was deliberately indifferent to his serious medical condition.

V. CONCLUSION

Therefore, at Wilmington this 31st day of January, 2005;

IT IS ORDERED that defendant Burns' motion to dismiss (D.I. 59) is denied.

Sue L. Robinson
United States District Judge