IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ROMAYNE O. JACKSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 03-1031-SLR
	)	
FIRST CORRECTIONAL MEDICAL SERVICES a/k/a First Correctional, WARDEN THOMAS CARROLL, AND COMMISSIONER STANLEY TAYLOR	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

At Wilmington this 27th day of March, 2006, having reviewed the motions for summary judgment filed by defendants First Correctional Medical Services ("FCM"), Warden Thomas Carroll and Commissioner Stanley Taylor, and the papers submitted in connection thereto;

IT IS ORDERED that said motions (D.I. 100, 102) are denied, for the reasons that follow:

1. **Background.** Plaintiff Romayne O. Jackson has been incarcerated in various Department of Correction ("DOC") facilities since October 2001, including the Delaware Correctional Center. As an inmate incarcerated in a DOC facility, plaintiff has been subject to the medical care of defendant FCM. Plaintiff brings suit against the named defendants for inadequate medical treatment and deliberate indifference under the Eighth Amendment, pursuant to 42 U.S.C. §

1983. (D.I. 2) Although the scope of his claims is somewhat hard to fix, given the "journal" that he regularly files with the court (see, e.g., D.I. 16, 22, 25, 30, 31, 38, 39, 42, 43, 61, 67, 73, 98), the focus of his Eighth Amendment claim is the failure of defendants to treat his chronic ear problems.[1]

2. **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

[1]The record indicates that plaintiff's ear problems most likely relate to the meningitis he suffered as a child.

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).

3. **Analysis.** To state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege 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). Consequently, plaintiff must demonstrate that: (1) he had a serious medical need; and (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). Deliberate

indifference may be established if "necessary medical treatment is delayed for non-medical reasons, or if an official bars access to a physician capable of evaluating a prisoner's need for medical treatment." Williams v. First Correctional Medical, 377 F. Supp. 2d 473, 476 (D. Del. 2005). See also Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979). A prison official is deliberately indifferent only when he or she has the required mental state. Williams, 377 F. Supp. 2d at 476. Either actual intent or recklessness will provide an adequate basis to show deliberate indifference. See Estelle, 429 U.S. at 105.

4. The Third Circuit has held that "[a] defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988); see also Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978). Personal involvement can be established through allegations of either personal direction or actual knowledge and acquiescence; however, such allegations must be made with particularity. See Rode, 845 F.2d at 1207.

5. It is evident from the record that defendants cannot be held liable based on the doctrine of respondeat superior. Defendant FCM is a business entity and, therefore, cannot be "personally" involved. Plaintiff has admitted in his deposition

that defendants Carroll and Taylor had no personal knowledge of his medical problems. (D.I. 101, exs. B14, 43-44, 49-50, 80-83)

6. Although defendants cannot be held liable under the doctrine of respondeat superior, they can be held liable for a policy or custom that demonstrates deliberate indifference. Miller v. Correctional Medical Systems, Inc., 802 F. Supp. 1126, 1131-32 (D. Del. 1992) (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978)); Swan v. Daniels, 923 F. Supp. 626, 633 (D. Del. 1995); Hyson v. Correctional Medical Services, 2003 WL 292085 at *3 (D. Del. Feb. 6, 2003). A "policy" is implemented when a "decisionmaker . . . issues an official proclamation, policy or edict." Whalen v. Correctional Medical Services, 2003 WL 21994752 at *1 (D. Del. Aug. 18, 2003). Custom is demonstrated by showing that a course of conduct "is so well-settled and permanent as virtually to constitute law." Id. A constitutional violation occurs only if policies and/or customs in place are "so inadequate and ineffective such that the mere decision to employ them demonstrates deliberate indifference on the part of the policy maker." See Swan, 923 F. Supp. at 633. There is no constitutional violation, however, where a medical professional chooses between equally appropriate forms of treatment. Key v. Brewington-Carr, 2000 WL 1346688 at *11 (D. Del. Sept. 6, 2000); Williams, 377 F. Supp.2d at 476.

7. The court's file contains what appears to be plaintiff's medical records, submitted without any apparent order and to a great extent illegible. Given the seriousness of plaintiff's medical problems and the state of the record, the court concludes that there are genuine issues of material fact with respect to plaintiff's Eighth Amendment claim. More specifically, the record indicates that plaintiff's medical care was interrupted with every transfer between DOC facilities, and that prescribed follow-up care with outside physicians was not provided. Therefore, defendants' motions for summary judgment are denied.

IT IS FURTHER ORDERED that, in order to help the court and the parties prepare the record for a bench trial, the parties shall meet and confer with Nancy Rebeschini, Esquire, the court's pro se law clerk, at a time and place to be determined.

United States District Judge