

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TIMOTHY B. NADEAU,)
)
 Plaintiff,)
)
 v.) 2:10-cv-00249-MJK
)
 MAINE DEPARTMENT OF CORRECTIONS,)
 et al.,)
)
 Defendants)

**MEMORANDUM OF DECISION¹ ON
UNOPPOSED MOTION FOR SUMMARY JUDGMENT**

Timothy Nadeau, a former inmate at the Maine Correctional Center, is continuing a suit against two nurses employed by Correctional Medical Services. The Court has previously granted judgment in favor of the other named defendants. Before me now is a motion for summary judgment filed by Debra Smith and Ellen Foster. Nadeau has not responded to this motion. I now grant judgment in the favor of Smith and Foster based on the discussion below.

DISCUSSION

Summary Judgment Standard

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant[s are] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). I draw all reasonable inferences in favor of Nadeau, but where he bears the burden of proof, he "must present definite, competent evidence' from which a reasonable jury could find in [his] favor."

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge Margaret J. Kravchuk conduct all proceedings in this case, including trial, and to order entry of judgment.

United States v. Union Bank For Sav. & Inv. (Jordan), 487 F.3d 8, 17 (1st Cir. 2007) (quoting United States v. One Parcel of Real Prop., 960 F.2d 200, 204 (1st Cir. 1992)).

Nadeau has not presented any evidence in defense of the motion for summary judgment.

However, this court,

may not automatically grant a motion for summary judgment simply because the opposing party failed to comply with a local rule requiring a response within a certain number of days. Rather, the court must determine whether summary judgment is “appropriate,” which means that it must assure itself that the moving party's submission shows 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); see also Advisory Committee Note to Rule 56 (“Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented.”).

NEPSK, Inc. v. Town of Houlton, 283 F.3d 1, 7 -8 (1st Cir. 2002). Although Nadeau is provided some latitude as a “pro se litigant, he must still defend his action within the context of the pleading rules.” See, e.g., Collins v. Colorado Dept. of Corrections, Civ. No. 08-cv-02657-WYD-KMT, 2010 WL 254959, 8 (D. Colo. Jan. 15, 2010).²

Eighth Amendment Inmate Medical Care Standard

The First Circuit recently addressed an Eighth Amendment deliberate indifference to medical care claim in Leavitt v. Correctional Medical Services, Inc., summarizing:

² Nadeau is not unfamiliar with dispositive motion practice in this court and the consequences of not carrying his burden as a plaintiff. I further note that on March 2, 2011, he filed a noncognizable second amended complaint and I ordered the pleading stricken. I indicated: “If plaintiff wishes to try to amend his complaint he must file a motion accompanied by a proposed amended complaint. He must set forth the reasons why he seeks leave to amend his complaint at this point in the proceedings.” (Doc. No. 40.) Nadeau has not filed anything since that March 3, 2011, order. On January 1, 2011, the Court received a request for an extension of time to file certain pleadings and therein Nadeau indicated that he was living in a homeless shelter. (Doc. No. 34.) While I sympathize with Nadeau’s tenuous situation, in fairness to the defendants the Court cannot allow this matter to dangle in the face of Nadeau’s failure to properly follow through on a civil action that he initiated and vis-à-vis which the Court has devoted a substantial amount of time.

“The Constitution ‘does not mandate comfortable prisons,’ but neither does it permit inhumane ones”; accordingly, “it is now settled that ‘the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.’” Farmer v. Brennan, 511 U.S. 825, 832 (quoting Rhodes v. Chapman, 452 U.S. 337, 349 (1981); Helling v. McKinney, 509 U.S. 25, 31 (1993)). The failure of correctional officials to provide inmates with adequate medical care may offend the Eighth Amendment if their “acts or omissions [are] sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106, (1976).

___ F.3d ___, ___, 2011 WL 2557009, 8 (1st Cir. June 29, 2011) (footnote omitted). For Nadeau to justify sending his Eighth Amendment inadequate medical care claim against Smith and Foster to trial he must create a genuine dispute of fact material to “both a subjective and objective inquiry: he must show first, ‘that prison officials possessed a sufficiently culpable state of mind, namely one of “deliberate indifference” to an inmate's health or safety,’ and second, that the deprivation alleged was ‘objectively, sufficiently serious.’” Id. at 9 (quoting Burrell v. Hampshire Cnty., 307 F.3d 1, 8 (1st Cir. 2002).

“For the subjective inquiry,” the First Circuit noted that the,

standard encompasses a “narrow band of conduct”: subpar care amounting to negligence or even malpractice does not give rise to a constitutional claim, Feeney [v. Corr. Med. Servs., Inc.], 464 F.3d [158,] 162 [(1st Cir. 2006)]; rather, the treatment provided must have been so inadequate as “to constitute ‘an unnecessary and wanton infliction of pain’ or to be ‘repugnant to the conscience of mankind,’” Estelle, 429 U.S. at 105–06, 97 S.Ct. 285; see also Alsina–Ortiz v. Laboy, 400 F.3d 77, 82 (1st Cir.2005) (“Willful blindness and deliberate indifference are not mere negligence; these concepts are directed at a form of scienter in which the official culpably ignores or turns away from what is otherwise apparent.”). We have concluded that “[d]eliberate indifference in this context may be shown by the denial of needed care as punishment and by decisions about medical care made recklessly with ‘actual knowledge of impending harm, easily preventable.’” Ruiz–Rosa [v. Rullan.], 485 F.3d [150,] 156 [1st Cir. 2007])(citing Feeney, 464 F.3d at 162 (quoting Watson v. Caton, 984 F.2d 537, 540 (1st Cir.1993))).

Id. Based on the undisputed facts below it is unnecessary to delve any further into the objective standard for the seriousness of the alleged deprivation.

Facts

On March 16, 2003, Debra Smith, a registered nurse employed by Correctional Medical Services at the Maine Correctional Center in Windham, received a call to assist an inmate in the chow hall. Smith went to the chow hall, where she was the first member of the medical staff to respond to the call for assistance, which involved inmate Timothy Nadeau. When Smith arrived at the chow hall she found Timothy Nadeau lying on his side on the floor, leaning on his elbow. Smith asked Nadeau what was wrong, he told her that he hurt all over and he could not get up. When Smith asked Nadeau to be more specific, he told her that his back and leg hurt. Smith called Elaine Foster, another registered nurse working at the Maine Correctional Center, for assistance. Smith took Nadeau's vital signs and tried to physically examine Nadeau by palpating his back and testing his legs for flexion, but he refused to allow her to do those things. Smith observed no external injuries on Nadeau's body. At some point during this encounter a security officer told Smith that Nadeau had "staged" a fall.

When Elaine Foster received Smith's call she went to the chow hall, along with a licensed practical nurse who had been working with her, to provide whatever help she could. When Foster arrived she found Smith attending to Nadeau. Someone brought a mattress to the area where Smith and Foster were attending to Nadeau. Smith and Foster then pushed the mattress next to Nadeau's body and rolled him onto it.

Neither Smith nor Foster, nor anyone else involved in this episode, treated Nadeau roughly. Smith and Foster took care to avoid causing Nadeau any undue pain, and in moving him used a method that was likely to be no more painful than any other measure they could have

taken to achieve the same result. Smith and Foster knew that Nadeau had come to the prison with a history of back injury (degenerative spine disease and a compression fracture of a lumbar vertebra) and low back pain which required treatment only with ibuprofen; neither believed Nadeau had a back condition which made him susceptible to serious harm from the actions that were taken by medical and security staff on March 16, 2010. Neither Smith nor Foster is aware of Nadeau sustaining any serious harm from the actions that were taken by medical and security staff on March 16, 2010. Within 24 hours after the incident of which he complains, Nadeau was walking around the prison without complaint. After the incident of March 16, 2010, Nadeau continued to complain of chronic low back pain, as he had before, but there was no observable decrease in his level of activity or function.

Merit Review and Conclusion

Based on these uncontroverted facts relating to Smith's and Foster's response to Nadeau on March 16, 2010, I grant summary judgment in favor of the defendants. On the record before me Nadeau has not created a genuine dispute of fact that these two defendants delivered "sub-par" care let alone that their response to this incident was so inadequate that it rose to the level of unnecessary and wanton infliction of pain. See Leavitt, 2011 WL 2557009 at 9. It is unnecessary to delve into the issue of whether or not Nadeau's condition was sufficiently serious so as to satisfy his burden under the second Farmer inquiry. Summary judgment in favor of Smith and Foster is 'appropriate' given the uncontroverted record submitted by these defendants. See NEPSK, Inc., 283 F.3d at 7 -8.

So Ordered.

July 7, 2011,

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

NADEAU v. MAINE DEPARTMENT OF
CORRECTIONS et al
Assigned to: MAGISTRATE JUDGE MARGARET J.
KRAVCHUK
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 06/21/2010
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil
Rights
Jurisdiction: Federal Question

Plaintiff

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PRO SE

V.

Defendant

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