FILED
United States Court of Appeals
Tenth Circuit

September 16, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ANTHONY JEFFREY CHRISTENSEN,

Plaintiff - Appellant,

v.

BRUCE BURNHAM; GRETCHEN NUNNLEY; ROSS BAILEY; BRANDON BROWN; BRAD BROWN; ROBERT BAITHWAITE; TREVOR LARSEN; LISA ESTEY; JEFF NIELSEN,

Defendants - Appellees.

No. 19-4048
(D.C. No. 2:18-CV-00143-DB)
(D. Utah)

ORDER AND JUDGMENT*

Before **BRISCOE**, **McHUGH**, and **MORITZ**, Circuit Judges.

Plaintiff Anthony Jeffrey Christensen, a pretrial detainee currently confined in the Sanpete County Jail in Manti, Utah, filed this pro se 42 U.S.C. § 1983 action against eight jail employees and the physician who provides medical services to inmates. Christensen alleged, in pertinent part, that the defendants were deliberately

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

indifferent to his serious medical needs. The district court dismissed seven of the defendants from the action and granted summary judgment in favor of the remaining two defendants, including the physician. Christensen now appeals. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

I

In the summer of 2016, Christensen was incarcerated in the State of Wyoming. During that time, a physician allegedly diagnosed him as suffering from internal hemorrhoids. Christensen expressed to that physician a preference for surgery as treatment for the condition. No surgery took place, however, and Christensen was released from custody.

In March of 2017, Christensen was arrested in the State of Utah and confined at the Sanpete County Jail. After his arrival, Christensen allegedly began urinating blood and his "internal organs hurt," so he "put in a medical request." ROA, Vol. 1 at 17. Approximately a week later, Christensen saw Dr. Bruce Burnham. According to Christensen, Dr. Burnham performed a urinalysis and concluded "there was no more blood" in Christensen's urine. Id. Dr. Burnham prescribed Christensen ibuprofen for his pain. According to Christensen, he "developed a bad opinion of [Dr. Burnham's] medical experience after an argument with him" during this visit. Id.

In January of 2018, Christensen allegedly was experiencing "severe bleeding" from his rectum, "[s]o [he] filled out a medical request form [on] January 12th." Id. Lisa Estey, a nurse at the jail, informed Christensen that Dr. Burnham "was on

leave," but scheduled Christensen to see Burnham upon his return. Id. at 18. Christensen allegedly talked to other jail employees about his medical issue, and all of them told him to submit a medical request form. On January 24, 2018, Christensen submitted a "General Inmate Request Form," in which he again requested to see a doctor. Id. at 107. Christensen saw Dr. Burnham on January 29, 2018. During the visit, Christensen "reported that he had rectal bleeding during bowel movements over the prior two weeks, but had not experienced this bleeding over the past few days." Id. at 196. According to Christensen, Dr. Burnham performed "a prostate exam," told Christensen "it is not cancer," and prescribed "fiber tabs." Id. at 18.

On February 2, 2018, Christensen "filed another medical request" form and was seen by Dr. Burnham on February 5, 2018. Id. During the visit, Christensen "complained of ongoing bleeding and protrusion of internal hemorrhoids during bowel movements." Id. at 196. Dr. Burnham prescribed Proctofoam HC, "with a maximum of one tube per month," and "directed . . . Christensen to administer the Proctofoam himself." Id. Dr. Burnham concluded that, "[i]n [his] medical opinion, . . . Christensen's condition did not require a visit with a medical specialist" at that time. Id. at 196–97. Christensen alleges that Dr. Burnham told Christensen that "he w[ould] not allow surgery." Id. at 18. Dr. Burnham also allegedly told Christensen that he "came to jail with the [hemorrhoid] problem" and "w[ould] leave with it." Id. Christensen allegedly asked Burnham "if sever [sic] rectal bleeding was normal," and Burnham responded "no, but a lot of things in life are not normal." Id. Burnham

also allegedly told Christensen that "if [he] end[ed] up in the big house 'prison,'" he "might allow surgery but not while [Christensen was] at the jail." Id. at 19.

After seeing Dr. Burnham on February 5, 2018, Christensen filed an inmate grievance form "request[ing] to be seen by another Dr. who deals with hemroids [sic] and possible hernia." Id. at 25. On February 10, 2018, Christensen submitted an "EMERGENCY GRIEVANCE APPEAL" complaining that no one had responded to his February 5, 2018 grievance. Id. at 27. He again requested "an appointment with a different Dr. outside the facility." Id. On February 10, 2018, Sergeant Ross Bailey denied Christensen's appeal. Id. at 127, 131. Bailey did so because "Dr. Burnham treated . . . Christensen and determined that it was not necessary for . . . Christensen to see a specialist." Id. at 127.

On February 22, 2018, Christensen filed another medical request form. Dist. Ct. Docket No. 16 at 1, 3. He stated on the form: "The medication you perscribed [sic] is only good for 14 uses. You said to use it once a day for a month. There is no way it last [sic] a month. Please check into this." Id. at 3. On February 26, 2018, Estey allegedly told Christensen that "she spoke with" Dr. Burnham and he told her he did not "want to see" Christensen and would not "adjust [the] medication." Id. at 1. Estey also allegedly told Christensen that she would refill his medications on March 6, 2018. Id. The jail records indicate, however, that Christensen elected not to refill his prescriptions for fiber tab or Proctofoam. ROA, Vol. 1 at 107–08.

On February 27, 2018, Christensen prepared a handwritten declaration that stated, in pertinent part, that "[t]he severe bleeding ha[d] stopped," but "all of the

other medical issues [we]re still in effect" and were "very uncomfortable" and "embarrassing." Dist. Ct. Docket No. 16 at 2.

II

On February 28, 2018, Christensen, appearing pro se and proceeding in forma pauperis, initiated this action by filing a complaint against Dr. Burnham, Estey, and seven other members of the jail staff: Gretchen Nunnley, Ross Bailey, Brad Bown, Robert Baithwaite, Brandon Brown, Trevor Larsen, and Jeff Nielsen. Id. at 13. The complaint alleged four causes of action: (1) "8th Amendment violation Cruel and unusual punishment"; (2) "14th Amendment violation Due process"; (3) "1st Amendment violation – Redress grievance"; and (4) 14th Amendment violation – Due process." Id. at 18–19. The complaint requested declaratory relief, injunctive relief, and compensatory and punitive damages.

On May 8, 2018, all of the defendants except for Dr. Burnham filed a motion for summary judgment. On May 31, 2018, Dr. Burnham filed his own motion for summary judgment.

On March 18, 2019, the district court issued a memorandum decision and order *sua sponte* dismissing certain defendants and granting summary judgment in favor of the remaining defendants. At the outset of its decision, the district court concluded that Christensen "ha[d] not affirmatively linked his claim to" defendants "Bailey, Brown, Bown, Braithwaite, Larsen, Nielsen, [or] Nunnley." Id. at 325. The district court noted that "[n]one of these defendants w[ere] in a position to provide medical care" and "[e]ach of them solely provided supervision or referred

[Christensen] to medical personnel or denied grievances." Id. "None of these activities," the district court concluded, "support[ed] a civil-rights claim." Id. As a result, the district court held that "all [of] these defendants [we]re dismissed." Id.

As for Dr. Burnham and Estey, the district court concluded that they "were not deliberately indifferent to [Christensen's] hemorrhoids from January 12 through February 28, 2018." Id. at 331. "To the contrary," the district court concluded, they "timely responded to [his] requests, scheduling appointments, and providing two examinations and two prescriptions." Id. The district court noted that the treatment "may not have been at the moment [Christensen] wanted it or the exact medication or dosage or other treatment that [Christensen] wanted, but the medical care was uniformly adequate in that [Christensen's] expressed need for help with pain and discomfort was consistently treated by Defendants." Id. at 331–32.

With respect to the difference of opinion between Dr. Burnham and Christensen regarding the proper treatment for Christensen's condition, the district court noted that Christensen's "point really [wa]s that he, as an unqualified layperson, wanted more or different treatment (surgery) from the medical-professional defendants—not, as it must be shown to prevail, that Defendants, with full knowledge of the deleterious effects of their actions or inactions, outright ignored or even exacerbated [Christensen's] serious medical needs." Id. at 332. The district court concluded that "even if [Christensen] could prove that alternative treatment was medically appropriate, [he] still [could not] meet his burden of

showing [Dr.] Burnham was unreasonable in relying on his own judgment," and therefore "[Dr.] Burnham merit[ed] qualified-immunity protection." Id.

As for the delay in treatment between January 12, 2018 (when Christensen filed his first medical request) and January 29, 2018 (when Christensen first saw Dr. Burnham), the district court concluded that this "f[ell] upon Defendant Estey, not [Dr.] Burnham." Id. at 333. The district court explained that "[t]here [wa]s no dispute that [Dr.] Burnham was out of town at the time of [Christensen's] request, so [Dr.] Burnham was not in a position to meet [the] request." Id. "Estey," the district court noted, "[wa]s the one who took [Christensen's] request and decided to set [him] for an appointment with the out-of-town [Dr.] Burnham instead of trigger more emergent care." Id. At that time, the district court noted, "the only symptom [Estey] personally had been notified of was that one morning [Christensen] had 'used the rest room and there was a lot of blood . . . then a short time later it stopped.'" Id. (quoting Dist. Ct. Docket No. 5-2). The district court further noted that "[t]here [wa]s no allegation that [Christensen] brought anything more to Defendant Estey's attention until January 24, when he informed her '"Still Bleeding" when I use the rest room . . . Please schedule appointment.'" Id. (quoting Dist. Ct. Docket No. 45 at 17). Christensen's "words," the district court concluded, "did not suggest an emergency, considerable pain, or fear of permanent loss or handicap." Id. In light of this undisputed evidence, the district court concluded that Estey "adequately fulfilled her gatekeeper role" and did not intentionally withhold treatment in order to inflict pain or harm upon Christensen. Id. at 334.

Final judgment was entered in the case on March 18, 2019. Christensen filed a notice of appeal on April 1, 2019.

II

Christensen generally challenges the district court's March 18, 2019 memorandum decision and order. We review de novo the district court's dismissal of Christensen's claims against the defendants other than Dr. Burnham and Estey. See Milligan v. Archuleta, 659 F.3d 1294, 1296 (10th Cir. 2011). Likewise, we review de novo the district court's grant of summary judgment in favor of Dr. Burnham and Estey. Bird v. W. Valley City, 832 F.3d 1188, 1199 (10th Cir. 2016). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Eighth Amendment claim

The primary focus of Christensen's complaint and subsequent district court pleadings was his claim that defendants, in their handling of his requests for medical relief, violated his rights under the Eighth Amendment. Prison officials "violate the Eighth Amendment's ban on cruel and unusual punishment if their 'deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain.'" Self v. Crum, 439 F.3d 1227, 1230 (10th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). "A negligent failure to provide adequate medical care, even one constituting medical malpractice, does not give rise to a constitutional violation." Perkins v. Kan. Dep't of Corr., 165 F.3d 803,

811 (10th Cir. 1999). "Moreover, a prisoner who merely disagrees with a diagnosis or a prescribed course of treatment does not state a constitutional violation." Id.

In assessing a claim that prison officials were deliberately indifferent to a prisoner's serious medical needs, we conduct a two-pronged inquiry, composed of an objective and subjective component. Self, 439 F.3d at 1230 (citing Farmer v. Brennan, 511 U.S. 825 (1994)). "Under the objective inquiry, the alleged deprivation must be 'sufficiently serious' to constitute a deprivation of constitutional dimension." Id. (citing Farmer, 511 U.S. at 834). Under the subjective inquiry, "the prison official must have a sufficiently culpable state of mind." Id. at 1231 (quotations omitted).

In this case, we begin by affirming the district court's dismissal of Christensen's Eighth Amendment claim against the defendants other than Dr. Burnham and Estey. These defendants, according to the record, had only tangential involvement in addressing Christensen's medical complaints. Specifically, these defendants were either approached informally by Christensen and then in turn advised him to file a medical request form, or they were involved in addressing the grievance form filed by Christensen after his second visit with Dr. Burnham. None of these defendants were personally involved in either the scheduling or provision of the actual medical treatment. Consequently, we conclude there is no evidence in the record that would allow a jury to find that any of these defendants were deliberately indifferent to Christensen's serious medical needs.

As for defendant Estey, the record establishes that her involvement was limited to responding to Christensen's medical request forms by either scheduling appointments for him to see Dr. Burnham or, in one instance, speaking with Dr. Burnham about the medical request form and then conveying Dr. Burnham's comments to Christensen. We are not persuaded that these actions on the part of Estey satisfy the subjective component of the deliberate indifference test. See Martinez v. Beggs, 563 F.3d 1082, 1089 (10th Cir. 2009) (concluding that the subjective component of the deliberate indifference test requires a defendant to know of an excessive risk to an inmate's health and to disregard that risk by failing to take reasonable measures to abate it).

That leaves only Christensen's Eighth Amendment claim against Dr. Burnham. Our review of the record establishes that Dr. Burnham recognized Christensen's medical condition and treated it with prescription medications. Christensen simply disagrees with Dr. Burnham about the proper course of treatment. Specifically, Christensen believes that surgery or an outside consultation is necessary, whereas Dr. Burnham does not. "This disagreement does not give rise to a claim for deliberate indifference to serious medical needs" against Dr. Burnham. Perkins, 165 F.3d at 811.

The other claims

Christensen's complaint also alleged violations of his rights under the First and Fourteenth Amendments of the United States Constitution. Those allegations, however, were never adequately fleshed out by Christensen, either in the complaint

or in his subsequent pleadings. Likewise, Christensen's appellate brief contains no serious discussion of those claims. Consequently, we affirm the district court's judgment as to those claims.

Christensen's remaining arguments

Christensen spends a substantial portion of his appellate brief arguing that his litigation efforts in this case were "hindered" by the "[i]nadequacy of legal material[s], and a law library, or help from people trained in law." Aplt. Br. at 2. Relatedly, he contends that he should have been appointed counsel to represent him in the case, and should also have been allowed to engage in discovery.

We conclude, after reviewing the record, that there is no merit to these arguments. The record firmly establishes that Christensen was able to provide the district court with all of the facts and evidence relevant to his claims against defendants, including copies of the medical request and grievance forms he submitted to defendants. There is nothing in the record establishing that the alleged shortcomings in the jail's law library "hindered [Christensen's] efforts to pursue [his] legal claim[s]." Lewis v. Casey, 518 U.S. 343, 351 (1996). Further, "as a civil litigant, [Christensen] has no Sixth Amendment right to counsel," and we decline to appoint one to represent him. Johnson v. Johnson, 466 F.3d 1213, 1217 (10th Cir. 2006).

III

The judgment of the district court is AFFIRMED. Christensen's motion for leave to proceed on appeal without prepayment of costs and fees is GRANTED. He

is reminded that he must continue making partial payments until the filing and docketing fees are paid in full.

Entered for the Court

Mary Beck Briscoe
Circuit Judge