

United States Court of Appeals
For the Eighth Circuit

No. 17-3815

Zachary A. Smith

Plaintiff - Appellant

v.

John A. Matthews, Former CRCC Medical Director; Paul R. Jones, Former CRCC Medical Director; Stephen E. Dorsch, CRCC Medical Director; J. Cofield, Corizon Director of Operations; T. Bredeman, Corizon Assoc Regional Medical Director; Corizon Health Inc.

Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - St. Joseph

Submitted: April 18, 2019
Filed: April 25, 2019
[Unpublished]

Before ERICKSON, BOWMAN, and GRASZ, Circuit Judges.

PER CURIAM.

In this 42 U.S.C. § 1983 action, Missouri inmate Zachary A. Smith appeals from the order of the District Court¹ granting summary judgment to the defendants. Viewing the record in the light most favorable to Smith and drawing all reasonable inferences in his favor, we see no error in the court's decision to grant summary judgment. See Allard v. Baldwin, 779 F.3d 768, 771 (8th Cir. 2015) (standard of review). We further find no basis for reversing the numerous other orders Smith challenges on appeal. We affirm.

¹The Honorable Fernando J. Gaitan, Jr., United States District Judge for the Western District of Missouri.

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Defendants - Appellees

**Appeal from U.S. District Court for the Western District of Missouri - St. Joseph
(5:16-cv-06067-FJG)**

JUDGMENT

Before ERICKSON, BOWMAN, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

April 25, 2019

**Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.**

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

ZACHARY A. SMITH,)
)
Plaintiff,)
)
vs.) Case No. 16-6067-CV-SJ-FJG-P
)
JOHN A. MATTHEWS, et al.,)
)
Defendants.)

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND DISMISSING CASE**

This civil rights case was filed *pro se* pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff is incarcerated at the Crossroads Correctional Center (CRCC), where his claims arose. The Defendants are Corizon, LLC, a business that contracts with the Missouri Department of Corrections to provide prisoner health care, along with medical and administrative officials employed by Corizon.

Pending before the Court is Defendants' motion for summary judgment, which the Court must grant if there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56(a). In applying this standard, the Court must "view the facts and the inferences to be drawn from them in the light most favorable to [Plaintiff]." *Dulany v. Carnahan*, 132 F.3d 1234, 1237 (8th Cir. 1997) (citation omitted).

Plaintiff claims that he has been denied proper medical care for testicular pain and discomfort. Doc. 1, p. 5 (complaint). For this ailment, Plaintiff states that he has been examined by four physicians, who ordered lab tests and prescribed antibiotics and medicines for pain. *Id.* at 5-9.

In addition to the examinations, labs, and medications described by Plaintiff, Defendants have filed evidence which includes this statement by Defendant Dr. Dorsch: "I diagnosed [Plaintiff has having] a probable spermatic chord cyst. My plan was to monitor the cyst [with] a possible future evaluation with a scrotal ultrasound. Mr. Smith declined an offer of additional pain medication." Doc. 110-1, p. 3 (Dorsch affidavit). Plaintiff was sent off-site for the ultrasound mentioned by Dr. Dorsch, which yielded these impressions: "1. Normal testes with small bilateral hydroceles [accumulation of fluid in a body sac], septated and slightly more prominent on the left than the right. 2. There are small benign nodular areas in both scrotal areas. 3. Color flow is normal." Doc. 110-4 (report).

Deliberate indifference to the serious medical needs of a convicted prisoner violates the Eighth Amendment to the United States Constitution. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). However, "a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical

mistreatment under the Eighth Amendment." *Id.* at 106. Rather, the "prisoner must show more than negligence, more even than gross negligence, and mere disagreement with treatment decisions does not rise to the level of a constitutional violation." *Estate of Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995).

In order to defeat Defendants' motion for summary judgment, Plaintiff must present "verifying medical evidence [which shows that Defendants] ignored an acute or escalating situation or that [Defendants' actions] adversely affected the prognosis" *Dulany*, 132 F.3d at 1243 (citations and quotation marks omitted).

Plaintiff has filed his sworn declaration to support his claims. Doc. 120-1. However, as in *Campbell v. McMinn County, Tennessee*, No. 1:10-CV-278, 2012 WL 369090, at *5 (E.D. Tenn. Feb. 3, 2012), "although Plaintiff's statement about his surgery provides context regarding the surrounding circumstances," it is not verifying medical evidence.

In addition to his sworn declaration, Plaintiff has filed information from various websites, including WebMD. Doc. 120-1. Plaintiff argues that the information he found on the internet is verifying medical evidence sufficient to defeat Defendants' motion for summary judgment, and, as support for this argument, he cites *Rowe v. Gibson*, 798 F.3d 622 (7th Cir. 2015). In *Rowe*, the majority (Judge Posner with Judge Rovner concurring) reversed the District

Court's grant of summary judgment in favor of a prison physician, citing "cautious, limited Internet research that we have conducted in default of the parties' having done so." *Id.* at 630. The dissent (Judge Hamilton) opined that the internet research cited by the majority did not constitute verifying medical evidence. *Id.* at 644. ("The websites the majority relies upon tell us themselves that their information needs to be interpreted by a qualified physician.") This Court is not bound by the 7th Circuit's decision in *Rowe. United States v. Auginash*, 266 F.3d 781, 784 (8th Cir. 2001). Further, this Court agrees with Judge Hamilton's assessment and finds that the information Plaintiff read on the internet and filed in this case is not verifying medical evidence sufficient to defeat Defendants' motion for summary judgment. *See also Cooper v. Diggs*, No. 07-1557, 2010 WL 2331067, at *3 n.5 (W.D. Penn. June 4, 2010) (reference to general medical treatises is not verifying medical evidence).

"[A]n inmate's mere disagreement with the course of medical treatment does not give rise to a constitutional claim." *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992), *cert. denied*, 507 U.S. 1009 (1993). The Court finds that this case boils down to such a disagreement and that Defendants are entitled to judgment as a matter of law.

Accordingly, Defendants' motion for summary judgment (Doc. 109) is granted, and this case is dismissed. Dismissal is without prejudice to any malpractice claim Plaintiff may pursue against Defendants in state court under state law. Plaintiff's federal-law claims against Defendant Dr. John Matthews, who was not served, are dismissed without prejudice to their presentation in a separate case if Plaintiff is able to locate and serve Matthews. Finally, Plaintiff is cautioned that federal law "makes prisoners responsible for [appellate filing fees of \$505.00] the moment the prisoner . . . files an appeal." *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation and quotation marks omitted).

So ORDERED.

/s/ Fernando J. Gaitan, Jr.
FERNANDO J. GAITAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: December 20, 2017.

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Appellees

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(5:16-cv-06067-FJG)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

. May 28, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans