APPENDIX-A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-3783

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 08, 2019
DEBORAH S. HUNT, Clerk

CARLIN U. POWELL,

Plaintiff-Appellant,

v.

MEDICAL DEPARTMENT CUYAHOGA COUNTY CORRECTIONAL CENTER, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

Before: DAUGHTREY, GRIFFIN, and STRANCH, Circuit Judges.

Carlin U. Powell, a pro se state pretrial detainee, appeals the district court's judgment dismissing his civil-rights action against the Cuyahoga County Correctional Center and associated personnel. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

I.

Powell was in custody in North Carolina and, based on a detainer, was transported to the Cuyahoga County jail to await trial on criminal charges brought by the State of Ohio. In his pleadings, Powell alleged that he is disabled, that he has undergone spinal surgery, and that he has a history of blood clots in his lungs, arms, and legs. He alleged that the jail's medical personnel did not have his required medication, leaving him in severe pain, and failed to care for his clotting ailment and back problems properly. Powell also alleged that prison officials at various times

denied him his medically required mattress and lower-bunk restriction, causing him severe pain and exposing him to risk of further injury. Powell also asserted that defendants violated his rights under the Interstate Agreement on Detainers Act, 18 U.S.C. app. 2, § 2 art. V(h), by requiring him to pay some of the cost of his medical treatment. He sought thirty million dollars in damages.

The district court screened Powell's complaint, *see* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c), and dismissed two defendants—the jail's "Medical Department" and "Metro Health Systems"—because they were not "person[s]" subject to suit for constitutional violations under 42 U.S.C. § 1983. The remaining defendants moved to dismiss Powell's complaint, *see* Fed. R. Civ. P. 12(b)(6), or for judgment on the pleadings, *see* Fed. R. Civ. P. 12(c). The district court granted judgment on the pleadings to the county jail and medical directors, ruling that they could not be held liable either in their individual or official capacities. The district court also granted judgment on the pleadings to several doctors who treated Powell in jail on his claims against them in their official capacities and on his individual-capacity claims related to his cell arrangements. But the district court denied the doctors' motion as it pertained to Powell's claims that they unconstitutionally denied him medication. Finally, the court granted judgment on the pleadings as to Powell's claims under the Interstate Agreement on Detainers Act, holding that the law did not give prisoners a right to free medical care during confinement.

The doctors then moved for summary judgment, *see* Fed. R. Civ. P. 56(a), on Powell's remaining claims, which alleged that they were deliberately indifferent to his serious medical needs when they denied him his required medication. The district court granted that motion and dismissed Powell's case.

Powell now appeals the district court's dismissal of his claims. He also argues that the district court erred in denying his discovery request for "medical footage" and "bedding records" corroborating his allegations. Powell also asserts for the first time that defendants violated his rights under the Americans with Disabilities Act.

II.

We review the district court's decision de novo. *See Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015) (Rule 12(b)(6)); *Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 607-08

(6th Cir. 2014) (Rule 12(c)); *Huckaby v. Priest*, 636 F.3d 211, 216 (6th Cir. 2011) (summary judgment); *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010) (screening). We review the dismissal of claims at the pleading stage under the standard set out in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See Hayward*, 759 F.3d at 608; *Hill*, 630 F.3d at 470-71. To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Because Powell was a pretrial detainee, his claims that the defendants were deliberately indifferent to his serious medical needs derive from the Due Process Clause of the Fourteenth Amendment, not, as is generally the case with deliberate-indifference claims, from the Eighth Amendment's prohibition on cruel and unusual punishment. *Winkler v. Madison County*, 893 F.3d 877, 890 (6th Cir. 2018). We have held, however, that the claims are "analogous." *Gray v. City of Detroit*, 399 F.3d 612, 615-16 (6th Cir. 2005).

A claim alleging deliberate indifference to a detainee's serious medical needs has two components. The first is objective: the detainee must prove that he had a sufficiently serious medical need. The second is subjective: the detainee must prove that the defendants possessed a sufficiently culpable state of mind when they denied him medical care; that is, the defendants must have known of, yet still disregarded, an excessive risk to the detainee's health or safety. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *see also Winkler*, 893 F.3d at 890-91.[1]

Upon screening the complaint, the district court dismissed Powell's claims against the jail's Medical Department and Metro Health Systems because those entities were not "person[s]" subject to damages suits for constitutional violations under 42 U.S.C. § 1983. On appeal, Powell does not explain why that decision was incorrect, and, in any event, it was not. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70-71 (1989).

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[1] Because the issue was not raised and is not dispositive here, we presume without deciding that the Fourteenth Amendment standard is identical to the Eighth Amendment standard. *See Richmond v. Huq*, 885 F.3d 928, 938 n.3 (6th Cir. 2018). But we note that some of our sister circuits have held since *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), that the standard for deliberate-indifference claims for pretrial detainees under the Fourteenth Amendment is easier for plaintiffs to meet than the standard for convicted prisoners under the Eighth Amendment. *See Darnell v. Pineiro*, 849 F.3d 17, 29–36 (2d Cir. 2017); *Castro v. City of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016).

The district court also dismissed Powell's claims against the county jail and medical directors. The court held that Powell did not allege either that those defendants personally participated in the alleged constitutional violations, as required to support claims against them in their individual capacities, *see Grinter v. Knight*, 532 F.3d 567, 575 (6th Cir. 2008), or that the violations arose from a policy or custom of the county, as required to prove them liable in their official capacities, *see Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690-91 (1978). Powell argues that the jail and medical directors "help[ed] try to cover up the actions of the Medical Departments and its [doctors]," that they are culpable because they failed to train or supervise their subordinates who were personally involved in the constitutional deprivations, and that they acquiesced in the constitutional violations. But even those rote allegations do not appear in his pleadings. Thus, the district court's dismissal of his claims was appropriate.

The district court dismissed those claims against the defendant doctors that related to Powell's cell arrangements because he did not allege that the doctors had any authority over his accommodations. And, in his complaint, Powell in fact alleged that a doctor recommended that he receive a medical mattress but that a jail employee refused to provide it. Because Powell did not allege that the doctors had power over his accommodations, he did not allege that they violated his rights by failing to provide a proper mattress and bunk assignment.

The district court also ruled against Powell on his claims that the doctors provided him inadequate medical care. The court dismissed those claims against the doctors in their official capacities because Powell did not allege that they acted in accordance with a policy or custom. Powell does not argue on appeal that that decision was incorrect.

III.

The district court permitted Powell's deliberate-indifference claims against the doctors in their individual capacities to proceed past the pleading stage, but the court ultimately granted summary judgment in favor of the doctors. Summary judgment is appropriate when "the movant shows that 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). In resolving a summary judgment motion, we view the

evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The district court granted summary judgment in favor of the defendant doctors after they produced uncontradicted evidence that they provided him with medical care. Defendants submitted an expert-witness affidavit from one of the defendant doctors, who recounted the medical care that Powell received at the jail. On appeal, Powell argues that the doctors repeatedly ignored his treatment requests. But defendants provided evidence that the medical staff was responsive to Powell's pleas, that he often did not complain of pain or request medication, and that he sometimes did not follow medical advice, including recommendations to take Tylenol and to attend physical therapy. Powell submitted no evidence to the district court in response sufficient to create a genuine dispute of material fact.

Powell also argues that the district court erred in denying his discovery request for video footage and bedding records that he believes would substantiate his deliberate-indifference claims. We review decisions on discovery matters under an abuse-of-discretion standard. *Pittman v. Experian Info. Sols., Inc.*, 901 F.3d 619, 642 (6th Cir. 2018). A district court abuses its discretion when we have "a definite and firm conviction that the court . . . committed a clear error of judgment." *Id.* (quoting *Interactive Prods. Corp. v. a2z Mobile Office Sols., Inc.*, 326 F.3d 687, 700 (6th Cir. 2003)).

The district court denied Powell's discovery motion when it granted summary judgment to the doctors. While the district court noted that the evidence might help Powell at trial, the court still granted summary judgment, ruling that Powell had presented no evidence contradicting the evidence submitted by the defendant doctors. Powell does not explain how that decision prejudiced him. *See id.* Video footage and bedding records would not have contradicted the doctors' evidence, which showed that they were not deliberately indifferent to his serious medical needs. In sum, the district court did not abuse its discretion in denying Powell's discovery request, and the court correctly granted summary judgment on his deliberate-indifference claims.

IV.

The district court also dismissed Powell's claims under the Interstate Agreement on Detainers Act, holding that the law did not provide prisoners with a right to free medical care. The Act "establish[es] procedures for the transfer of a prisoner in one jurisdiction to the temporary custody of another jurisdiction." *Cuyler v. Adams*, 449 U.S. 433, 443 (1981). It provides that the receiving state shall "pay all costs of transporting, caring for, keeping, and returning the prisoner." 18 U.S.C. app. 2, § 2 art. V(h). The district court held that this provision merely prevents confusion about that issue, given that another provision in the law states, "For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State." 18 U.S.C. app. 2, § 2 art. V(g). The district court held that the Act was silent about "how a state is to finance a prisoner's detention or whether the state can recoup the costs of caring for a prisoner from the prisoner himself." Powell cites no authority to the contrary. And because there is nothing unconstitutional about requiring detainees with sufficient monetary resources to pay a small portion of their medical care, the district court correctly dismissed Powell's claim. *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 245 n.7 (1983); *Reynolds v. Wagner*, 128 F.3d 166, 174 (3d Cir. 1997).

Finally, in his appellate brief, Powell raises a claim under the Americans with Disabilities Act. But Powell never raised this claim in the district court, and he may not present it for the first time on appeal. *See Brent v. Wayne Cty. Dep't of Human Servs.*, 901 F.3d 656, 690 (6th Cir. 2018), *petition for cert. filed* (U.S. Jan. 7, 2019) (No. 18-1045).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CARLIN UPTON POWELL, Plaintiff, vs. MEDICAL DEPARTMENT CUYAHOGA COUNTY CORRECTIONAL CENTER, *et al.*, Defendants.	Case No. 1:17-cv-1302 OPINION & ORDER [Resolving Docs. 35, 36, 51, 55]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Plaintiff Carlin Powell is a pre-trial detainee in the Cuyahoga County Correctional Center.[1] He has filed this lawsuit against a variety of defendants alleging that they were deliberately indifferent to his medical needs in violation of the Eighth Amendment and violated the Interstate Agreement on Detainers.[2]

The Court has previously described Powell's factual allegations[3] and will not describe them again here. Suffice it to say the Court has already dismissed all of Plaintiff Powell's claims except for his claim that several doctors who service the Correctional Center unconstitutionally denied him medication.[4] Those Doctor Defendants now move for summary judgment on that claim.[5]

Under Federal Rule of Civil Procedure 56, "[s]ummary judgment is proper when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'"[6] The moving party must first demonstrate that there is no genuine dispute as to a material fact entitling it to judgment.[7] Once the moving party has done so, the non-moving party must set forth specific

[1] Doc. 10 at 1.
[2] *See generally* Doc. 1.
[3] Doc. 42; Doc. 52.
[4] Doc. 42 at 9. The Doctor Defendants are Doctor John Yourself; Doctor Alan Gatz; Doctor Rekha Ujla; Doctor Albert Coreno; Doctor Leslie Koblentz; and Doctor Thomas Tallman. Doc. 1 at 2.
[5] Doc. 51. Plaintiff Powell opposes. Doc. 55. The Doctor Defendants reply. Doc. 57.
[6] *Killion v. KeHE Distribs., LLC*, 761 F.3d 574, 580 (6th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)).
[7] *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

facts in the record—not its allegations or denials in pleadings—showing a triable issue.[8] The non-moving party must show more than some doubt as to the material facts in order to defeat a motion for summary judgment.[9] But the Court views the facts and all reasonable inferences from those facts in favor of the non-moving party.[10]

When parties present competing versions of the facts on summary judgment, a district court adopts the non-movant's version of the facts unless incontrovertible evidence in the record directly contradicts that version.[11] Otherwise, a district court does not weigh competing evidence or make credibility determinations.[12]

With their motion for summary judgment, the Doctor Defendants show evidence demonstrating that Plaintiff Powell received medical treatment, including some medication, a referral to physical therapy, and multiple consultations.[13] Plaintiff Powell has produced no admissible evidence in response to the Defendants' evidence. While Powell has produced statements contesting the accuracy of the Doctor Defendant's evidence, none of those statements are sworn or declared to be given under penalty of perjury. As a result, they cannot be considered at the summary judgment stage.[14]

Plaintiff Powell has also produced evidence demonstrating that he has had back surgery and other medical treatment in the past.[15] But that evidence obviously does not show whether he received proper treatment at the Correctional Center. And to the extent that Powell believes that he

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[8] *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (2018).

[9] *Id.* at 586.

[10] *Killion*, 761 F.3d at 580 (internal citations omitted).

[11] *See Scott v. Harris*, 550 U.S. 372, 380 (2007).

[12] *Koren v. Ohio Bell Tel. Co.*, 894 F. Supp. 2d 1032, 1037 (N.D. Ohio 2012) (citing *V & M Star Steel v. Centimark Corp.*, 678 F.3d 459, 470 (6th Cir. 2012)).

[13] Doc. 51-1. This evidence also defeats any surviving argument that the Correctional Center is not a suitable facility under the Interstate Agreement on Detainers.

[14] *Worthy v. Mich. Bell Tel. Co.*, 472 F. App'x 342, 343–45 (6th Cir. 2012); *Little v. BP Exploration & Oil Co.*, 265 F.3d 357, 363 n.3 (6th Cir. 2001); *Dole v. Elliot Travel & Tours, Inc.*, 942 F.2d 962, 968–69 (6th Cir. 1991).

[15] Doc. 39.

should have received better care, his claim sounds in medical malpractice rather than the Eighth Amendment.[16]

Plaintiff Powell also requests video footage from the prison to demonstrate that he did not receive the medical treatment at the times the Doctor Defendants claim.[17] But however helpful that evidence might be at trial, the Court does not believe that it should delay its summary judgment ruling based on this request. Plaintiff Powell could have avoided summary judgment by submitting sworn evidence, including his own sworn declaration or affidavit, contradicting the Doctor Defendants' account of events. He did not do so.

For those reasons, the Court **GRANTS** the Doctor Defendants' motion for summary judgment and **DENIES AS MOOT** Plaintiff Powell's motion to compel video footage.[18] Because this resolves the last of Plaintiff Powell's claims, his complaint is **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

Dated: August 8, 2018

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

[16] *See Dotson v. Wilkinson*, 477 F. Supp. 2d 838, 848–49 (N.D. Ohio 2007) ("[D]ifferences in judgment between an inmate and prison medical personnel regarding the appropriate medical diagnoses or treatment are not enough to state a deliberate indifference claim. This is so even if the misdiagnosis results in an inadequate course of treatment and considerable suffering. Finally, where a prisoner has received some medical attention, but disputes the adequacy of that treatment, the federal courts are reluctant to second-guess the medical judgments of prison officials and constitutionalize claims that sound in state tort law." (internal citations omitted)); *see also Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001) ("When a prison doctor provides treatment, albeit carelessly or inefficaciously, to a prisoner, he has not displayed a deliberate indifference to the prisoner's needs, but merely a degree of incompetence which does not rise to the level of a constitutional violation.").

[17] Doc. 55-1 at 5–6.

[18] To the extent it is still pending, the Court also **DENIES AS MOOT** Plaintiff Powell's requests for a medical examination or other discovery. Doc. 35, 36. Furthermore, the Court does not construe Powell's complaint to have raised any state-law claims (such as medical malpractice), but to the extent it was intended to the Court declines to exercise supplemental jurisdiction over those claims.