NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 19-5041

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VAUGHN HARRIS, Plaintiff-Appellant, v. DAVIDSON COUNTY SHERIFF, et al., Defendants, and METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

ORDER

Before: CLAY, McKEAGUE, and BUSH, Circuit Judges.

Vaughn Harris, a Tennessee pretrial detainee proceeding *pro se*, appeals the district court's judgment in favor of the defendants in this civil rights action filed under 42 U.S.C. § 1983. 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).

Harris filed a civil rights complaint challenging the conditions of his confinement at the Davidson County Criminal Justice Center and named Correct Care Solutions, the Davidson County

Sheriff's Office, and several individuals as defendants. Upon initial screening, the district court dismissed all of Harris's claims except for his claims against Correct Care Solutions. Harris subsequently filed multiple motions to amend his complaint, which a magistrate judge denied, and filed a notice of appeal from the district court's dismissal order. This Court dismissed Harris's interlocutory appeal for lack of appellate jurisdiction.

After this Court dismissed his appeal, Harris asked the district court to consider his last filed amended complaint. The magistrate judge granted Harris's motion and reviewed his last filed amended complaint, recommending that several of his claims be dismissed. Harris continued to file motions to amend his complaint, while the defendants filed answers and motions to dismiss. Upon the magistrate judge's recommendation, the district court granted in part and denied in part the defendants' motions to dismiss and dismissed several of Harris's claims. The district court gave Harris twenty-one days to file an amended complaint with instructions to narrow down the issues and defendants. In response, Harris filed a proposed amended complaint with approximately 350 pages of attachments. The magistrate judge scheduled a case management conference and directed Harris to bring an amended complaint complying with Federal Rule of Civil Procedure 8. Before the scheduled case management conference, however, the district court dismissed Harris's case pursuant to Federal Rule of Civil Procedure 41(b) for failing to comply with the court's rules and orders.

Harris appealed. Vacating and remanding, this Court concluded that the district court abused its discretion in dismissing Harris's case without warning before the scheduled case management conference. *Harris v. Davidson Cty. Sheriff*, No. 17-5502, 2018 WL 2072585 (6th Cir. Apr. 25, 2018) (order).

On remand, the district court dismissed additional defendants. Harris filed multiple motions requesting leave to amend or supplement his pleadings, which the district court denied. The defendants moved for summary judgment as to Harris's remaining claims: (1) his claim that Dr. Krystal Lewis denied him dental care, (2) his claim that Officer Beatrice Aluoch used excessive force against him, and (3) his claims that Correct Care Solutions and the Metropolitan Government of Nashville and Davidson County (Metro Government) should be liable for the violations of his

constitutional rights by Dr. Lewis and Officer Aluoch. The district court construed Harris's filings as a motion for summary judgment and a response to the defendants' motions for summary judgment. The district court granted the defendants' motions, denied Harris's motion, and entered judgment in favor of the defendants.

This timely appeal followed. Harris challenges the district court's decisions granting summary judgment in favor of the defendants and denying him leave to amend or supplement his pleadings. Harris also claims that the district court and the magistrate judge issued biased rulings. By failing to address the district court's prior dismissal orders, Harris has forfeited any challenge to the district court's dismissal of defendants and claims before its summary judgment decision. *See McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997).

Summary Judgment

We review the district court's decision to grant summary judgment *de novo*. *Hanrahan v. Mohr*, 905 F.3d 947, 953 (6th Cir. 2018). Summary judgment is appropriate "if 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). We must view the evidence and draw all reasonable inferences in favor of the non-movant and determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

1. Denial of Dental Care

Harris claimed that Dr. Lewis denied him dental care in violation of his Eighth and Fourteenth Amendment rights. Because Harris is a pretrial detainee, his claim is governed by the Fourteenth Amendment but "analyzed under the same rubric as Eighth Amendment claims brought by prisoners." *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013). "A cause of action under § 1983 for failure to provide adequate medical treatment requires a showing that the defendants acted with deliberate indifference to the serious medical needs of the pretrial detainee." *Spears v. Ruth*, 589 F.3d 249, 254 (6th Cir. 2009) (quoting *Estate of Carter v. City of Detroit*, 408 F.3d 305, 311 (6th Cir. 2005)). A deliberate indifference claim has both an objective

and a subjective component. *Richmond v. Huq*, 885 F.3d 928, 937-38 (6th Cir. 2018). "The objective component requires the plaintiff to show that the medical need at issue is 'sufficiently serious.'" *Id.* at 938 (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). With respect to the subjective component, a prison official cannot be held liable "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. The subjective requirement "is meant to prevent the constitutionalization of medical malpractice claims; thus, a plaintiff alleging deliberate indifference must show more than negligence or the misdiagnosis of an ailment." *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001).

The district court assumed that Harris's decayed teeth constituted a serious medical need but determined that his Fourteenth Amendment claim failed because no jury could find that Dr. Lewis was deliberately indifferent to that need. "As a general rule, a patient's disagreement with his physicians over the proper course of treatment alleges, at most, a medical-malpractice claim, which is not cognizable under § 1983." *Darrah v. Krisher*, 865 F.3d 361, 372 (6th Cir. 2017). "Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). On the four occasions when Harris requested dental care, he was promptly examined by a nurse, who ordered pain medication. On three occasions, a nurse referred Harris to Dr. Lewis. During the first appointment, Dr. Lewis examined Harris, took x-rays, prescribed medication, and discussed the treatment options—root canal treatment, which was not available at the facility where he was housed, or extraction. During the second appointment, Dr. Lewis again discussed the treatment options with Harris, who maintained that he wanted fillings and did not want a root canal or extraction. Harris refused his third appointment with Dr. Lewis. Harris presented a disagreement as to treatment—he believed that his decayed teeth could be filled, while Dr. Lewis believed that the only options were root canal treatment or extraction. The district court properly held that such a disagreement is insufficient to support a deliberate indifference claim.

2. Excessive Force

Harris claimed that Officer Aluoch closed his arm in a cell door in violation of his Eighth and Fourteenth Amendment rights. Because Harris is a pretrial detainee, his excessive force claim is analyzed under the Fourteenth Amendment. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015). To establish an excessive force claim under the Fourteenth Amendment, "a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable." *Id.* at 2473.

In his deposition, Harris testified that he was exiting the cell when the door began to close and that he tried to back up, leaving his arm stuck out because he had a cup of juice in his hand. Harris conceded that he knew that the door was closing but misgauged the timing. Harris testified that he does not know if Officer Aluoch could see him from where she operated the cell doors and suggested that other inmates might have blocked her view. The defendants presented evidence that the control panel to operate the cell doors was located outside the unit and that inmates inside their cells would not be visible to a correctional officer operating the control panel. In the absence of any evidence that Officer Aluoch was aware that Harris was in the doorway, a jury at most could find that she acted negligently, rather than purposely or knowingly. *See Ritchie v. Wickstrom*, 938 F.2d 689, 692 (6th Cir. 1991). Because "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process," *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998), the district court properly granted summary judgment in favor of Officer Aluoch.

3. Municipal Liability

To impose § 1983 liability on Correct Care Solutions and the Metro Government, Harris must establish that his constitutional rights were violated and that a policy or custom was the "moving force" behind that violation. *Rouster v. County of Saginaw*, 749 F.3d 437, 453 (6th Cir. 2014) (quoting *Miller v. Sanilac County*, 606 F.3d 240, 254-55 (6th Cir. 2010)). Because, as discussed above, Harris failed to establish a constitutional violation, the district court properly granted summary judgment in favor of Correct Care Solutions and the Metro Government on his claims.

Harris argues on appeal that Correct Care Solutions and the Metro Government can be held liable for injuries caused by its agents pursuant to Tennessee Code Annotated sections 29-20-201(b)(2) and 29-20-205. These Tennessee statutes addressing governmental immunity from tort liability have no application to Harris's constitutional claims under § 1983. *See Draine v. Leavy*, 504 F. App'x 494, 495 (6th Cir. 2012) (per curiam) ("Whether a defendant is entitled to immunity from a § 1983 action is a question of federal law.").

Motions to Amend or Supplement the Complaint

On appeal, Harris argues that the district court should have allowed him to amend or supplement his amended complaint. Federal Rule of Civil Procedure 15(a)(2) provides that, except for limited amendments allowed as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave," but that "[t]he court should freely give leave when justice so requires." Under this standard, leave to amend a complaint may be denied where there is "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Unless the district court denies a motion for leave to amend on the basis of futility, we review the denial of leave for abuse of discretion. *Miller v. Champion Enters. Inc.*, 346 F.3d 660, 671 (6th Cir. 2003). "[T]he same standard of review and rationale apply" to a motion to supplement under Rule 15(d). *Spies v. Voinovich*, 48 F. App'x 520, 527 (6th Cir. 2002).

"[I]mplicit in [Rule 15(a)(2)] is that the district court must be able to determine whether 'justice so requires,' and in order to do this, the court must have before it the substance of the proposed amendment." *Roskam Baking Co. v. Lanham Mach. Co.*, 288 F.3d 895, 906 (6th Cir. 2002). Harris failed to attach a copy of his proposed amended or supplemented complaint to his motions; he instead referenced multiple prior filings, most of which were filed before this Court's remand. The district court did not abuse its discretion in denying Harris's motions to amend or supplement to the extent that he failed to clearly present the nature of his proposed amendments or supplements.

Two of Harris's filings could be construed as proposed amended complaints. These eighty-page filings consisted of handwritten pages interspersed with photocopies of statutes and cases, the defendants' discovery responses, and Harris's prison and medical records. Harris's filings failed to comply with the district court's repeated instructions to narrow down the issues and defendants and to file an amended complaint satisfying Rule 8's requirement that a pleading contain "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). Given Harris's continued failure to cure his pleading deficiencies, the district court did not abuse its discretion in rejecting these filings.

Judicial Bias

Harris contends that the district court and the magistrate judge issued biased rulings against him. But Harris fails to point to any evidence of bias on the part of the district court or the magistrate judge other than their unfavorable rulings, which almost never constitute judicial bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

Pending Motions

Harris has filed multiple motions asking this Court for various relief, including class certification, leave to amend or supplement his pleadings, the addition of parties, a stay of his pending state criminal case, etc. We lack authority to grant the relief requested by Harris and are limited to reviewing the district court's rulings in this civil case. *See* 28 U.S.C. § 1291.

Harris also moves for appointment of counsel. "Appointment of counsel in a civil case is not a constitutional right" but "a privilege that is justified only by exceptional circumstances." *Lavado v. Keohane*, 992 F.2d 601, 605-06 (6th Cir. 1993). Harris has not demonstrated exceptional circumstances warranting the appointment of counsel in this appeal.

For these reasons, we **AFFIRM** the district court's judgment in favor of the defendants and **DENY** Harris's pending motions.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix A

★ MOTION TO HAVE THE U.S SUPREME COURT ORDER THE CLERK RETRIEVE THE FINAL ★
DECISION OF THE U.S. 6TH Circuit APPEALS COURT BY EFILE FROM
★ THAT COURT + CLERK ON APPEAL CASE 19-5041 (DATE 12-11-2019) AND IT'S BRIEFS ★

I, HARRIS, request the Court to order the U.S. Supreme Court Clerk to retrieve the needed document for Appendix-A from the U.S 6TH Circuit Court by EFILE and all Briefs filed to that appeals court and place them in Appendix-A.

Appendix B

MOTION ASKING THAT THE U.S. SUPREME COURT ORDER ITS CLERK TO RETRIEVE THE FINAL DECISION OF THE U.S. FEDERAL MIDDLE DISTRICT COURT FOR TENNESSEE CASE No. 3:15-cv-00356 FILED ON DATE 12-11-2018 BY EFILE FROM THAT COURT AND CLERK AND TO FILE THAT COURT DOCUMENT AS APPENDIX-B WITH REQUEST OF REVIEW OF ALL THAT CASES REQUEST FOR AMENDMENTS OR SUPPLEMENTLE PLEADINGS

Because the defendants have destoyed my copy of the U.S. Middle District Court of TENNESSEE final decision papers, I am requesting the documents be recovered by EFile from that Court and Clerk Filed on date 12-11-2018 Case No. 3:15 -cv-00356 and have the U.S. Supreme Court review all that cases request for Amendment of the pleadings or request to plead supplementle pleadings on that case.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

VAUGHN E. HARRIS — PETITIONER
(Your Name)

VS.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY TENNESSEE et al. — RESPONDENT(S)

PROOF OF SERVICE

I, VAUGHN HARRIS, do swear or declare that on this date, MARCH 10, 2020, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: ① THE METRO. NASHVILLE LEGAL DEPARTMENT, P.O. Box 196300, NASHVILLE, TN 37219 (derrick.smith@nashville.gov) ② Dr Krystal Lewis AND ③ (Correct Care Solutions AND ITS STAFF) at the same above address because, they are agents of the METRO. NASHVILLE, TENNESSEE GOVERMENT by THE DAVIDSON COUNTY SHERIFF'S OFFICE PRETRIAL PRISON

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 10, 2020

Vaughn Harris
(Signature)

I declare under penalty of perjury under the Laws of the United States of America, that the foregoing is true and correct.

Vaughn Harris

DATE 3-9-2020

Vaughn Harris
(Signature)

VAUGHN HARRIS #98865
(Print Name)

P.O. Box 196383
Nashville, TN 37219

[redacted] VAUGHN HARRIS #98865
(Address & Telephone Number, if any)

Court Clerk please EFILE Copies of All Documents To the Defendants Legal Council Listed BELOW

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing has been served upon Filing Users via the electronic filing system and on other counsel via U. S. Mail, first-class postage prepaid, this 9 DAY, 2018 on the following: DEFENDANTS OR Counsel for the Defendants:

represented by **Derrick C. Smith**
Metropolitan Legal Department
P O Box 196300
Nashville, TN 37219
(615) 862-6341
Fax: (615) 862-6352
Email: derrick.smith@nashville.gov
ATTORNEY TO BE NOTICED

/s Vaughn Harris
SIGNATURE OF SENDER OF SERVICE
VAUGHN HARRIS

s/ Preston A. Hawkins
Preston A. Hawkins, Esq. (TN BPR #022117)
phawking@lewisthomason.com
LEWIS, THOMASON, KING, KRIEG & WALDROP, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901
(865) 546-4646
Attorneys for Appellees

09/08/2015	80	ANSWER to 36 Amended Complaint by B. Aluoch.(Smith, Derrick) (Entered: 09/08/2015)
09/09/2015		BAR STATUS FOR ATTORNEY R. ALEX DICKERSON of TN verified active on this date. (am) (Entered: 09/09/2015)
09/09/2015		BAR STATUS FOR ATTORNEY DERRICK C. SMITH of TN verified active on this date. (am) (Entered: 09/09/2015)
09/09/2015		**DISREGARD ENTERED IN ERROR** BAR STATUS OF ATTORNEY JAMES E. FARMER of TN verified active on this date. (am) Modified on 9/9/2015 (am). (Entered: 09/09/2015)
09/09/2015		**DIREGARD ENTERED IN ERROR** Note to Filer re DE 30 : Pursuant to Local Rule 5.01, Certificates of Service shall identify by name the person served, what was served, the method of service, and date of service. Please FILE a conformed Certificate of Service for this document. (am) Modified on 9/9/2015 (am). (Entered: 09/09/2015)
09/09/2015	81	Summons Returned Unexecuted as to Davidson County-Metro Government Nashville. (Summons and 285 do not have an address. In order to be served, summons and 285 need an address for the Metro Courthouse.) (am) (Entered: 09/09/2015)
09/15/2015	82	ORDER: A summons for the Davidson County Metropolitan Government of Nashville has been returned unexecuted by the United States Marshals Service (Docket Entry 81). Surely, the Marshals Service has an address for the Metro Courthouse. The Clerk will prepare a new summons Form 285 for the Marshals Service to serve and the Clerk will list the address for the Davidson County Metropolitan Government of Nashville. Signed by Magistrate Judge Joe Brown on 9/15/15. (xc:Pro se party by regular and certified mail.)(am) (Entered: 09/15/2015)
09/16/2015	83	Summons Reissued as to Metropolitan Government of Nashville and Davidson County, Tennessee. (am) (Entered: 09/16/2015)
09/16/2015	84	CERTIFIED MAIL RECEIPT re 82 Order. (am) (Entered: 09/16/2015)
09/18/2015	85	PLAINFIFF'S OBJECTIONS filed by Vaughn Harris re 78 Motion to Stay. (am) (Main Document 85 replaced on 9/21/2015) (am). (Entered: 09/21/2015)
09/18/2015	86	MOTION FOR INMATES AND EMPLOYEE INFO AND LEAVE OF COURT TO AMEND PLAINTIFFS COMPLAINT by Vaughn Harris. (am) (Entered: 09/21/2015)
09/21/2015		Per DE: 85 , Pro se party sent docket sheet by regular mail. (am) (Entered: 09/21/2015)
09/22/2015	87	GREEN CARD RETURNED Executed as to 82 Order. (am) (Entered: 09/23/2015)
09/24/2015	88	SUMMONS returned executed Correct Care Solutions served on

C-3B

Suit Defendants Listed Below and on next pages LIST OF PARTIES page 4B

1. The Metropolitan Government of Nashville and Davidson County, Tennessee
2. City of Nashville, Tennessee 26. JAMIE JOHNSON 2. And the Davidson County Sheriff's Office
3. Correct Care Solutions 27. RUBY JOYNER
4. MELINDA STEPHENS 28. TYLER SAGGS 50. HIGGINS
5. DR Krystal Lewis 29. M. C COOK 51. JACOB BIANCHI
6. Jenny Jaynes 30. T. LEVY 52. JENNIFER COBBS
7. Tom WEBB 31. Austin, DALE 53. A. BUCHANAN
8. JEANETTE PAGE 32. T HINDSLEY 54. MELISSA HICKS
9. JAN REBAR 33. CLARK SARGENT 55. RUTLEDGE
10. AARON CASKEY 34. SEAN BEACH 56. (CORRECT CARE SOLUTIONS MEDICAL AGENTS AND EMPLOYEES AND STAFF - etc...)
11. MICHELLE RAGLAND 35. M. GRAULAU 57.
12. APRIL MC QUEEN 36. M. HEDGWOOD 92. Shavon
13. LOREENA Willams 37. ANNALISA SMITH 97. CANDY HILL
14. JEFF (LAST NAME UNKNOWN) 38. NICHOLAS PALLAK 98.
15. Austin Bodie 39. DAVID BRYANT 99. EMILIO SEGARRA
16. DARON HALL 40. THOMAS CONRAD 100. MILTON SKELTON
17. CATHERINE FITZWATER 41. JERRY RAMSEY 101. PATRICK VONGSAMPHANH
~~18. KENITA THOMAS~~ 42. RICHARD GRANT 102. C MACKEY
19. M [redacted] JONES 43. LT. DIAL 103. George TORRES
20. JUSTIN WEBB 44. S. PRICE
21. KEIANA BURGESS 45. SARA VARDELL
22. BRIAN EICHSTAEDT 46. [redacted]
23. RONNIE DAVIS 47. JAMES HENDRY
24. DEBRA DIXON 48. MICHAEL MARTINEZ
25. GRAVISSE EARL 49. CHRIS BROWN (C.C.S. MEDICAL AGENTS) EMPLOYED IN DAVIDSON COUNTY SHERIFF'S OFFICE PRETRIAL PRISON

56 thru 98 ASSISTANCE BY CORRECT CARE SOLUTIONS FOR THE DAVIDSON COUNTY METRO. NASHVILLE TN D.C.S.O. AND [redacted]

ALL defendants are being sued in thier individual and official capacities. All are employees or Agents of the Davidson County Sheriffs Office, 448 2nd Ave North, 37201, or D.C.S.O. → METROPOLITAN GOVERNMENT OF NASHVILLE Tennessee, Nashville, TN MEDICAL AGENTS EMPLOYED BY THE D.C.S.O. AND METRO" by Correct Care Solutions, 1283 Murfreesboro Road, Suite 500, Nashville, TN 37217, and Dr. Krystal Lewis and Jenny Jaynes - Dentle Care Agents of Correct Care Solutions for the METRO. DAVIDSON COUNTY SHERIFF'S OFFICE PRETRIAL PRISON FROM 2014 thru 2019. ALL can be given SUMMONS at the DAVIDSON COUNTY SHERIFF'S OFFICE PRETRIAL PRISON OR CORRECT CARE SOLUTIONS FOR ANY OF THE MEDICAL OR DENTLE CARE EMPLOYEES OR AGENTS. 98 thru 120 - All other DAVIDSON COUNTY SHERIFF'S OFFICE EMPLOYEES OR AGENTS OF METRO" or the D.C.S.O.

13A

Defendant

Louise Ashworth
L.P.N. (Medical Staff)

Defendant

Jan Rebar
R.N. (Medical Staff)

Defendant

Karen King
R.N. (Medical Staff)

Defendant

Candy Hill

Defendant

f/n/u Skelton

Defendant

Jeff l/n/u
C.C.S. L.P.N.

Date Filed	#	Docket Text
[redacted]	1	COMPLAINT against Chelsea Adkins, Louise Ashworth, Judd Bazel, Sean Beach, Austin Bodie, Chris Brown, David Bryant, Keiana Burgess, Roberta Burns, Aaron Caskey(L.P.N. (Medical Staff)), Aaron Caskey, f/n/u Clark, Thomas Conrad, M.C. Cook, Correct Care Solutions, Austin Dale, Timothy Dannels, Ronnie Davis, Tracy Davis, f/n/u Dial, Debra Dixon, Calista Doll, Gravisse Earl, Brian Eichstaedt, Catherine Fitzwater(R.N. (Medical Staff)), Catherine Fitzwater, Richard Grant, M. Graulau, Daron Hall, Lisa Harrold, M. Hedgwood, James Hendry, Kayla Hickerson(L.P.N. (Medical Staff)), Candy Hill, T. Hindsley, Aubree Hoyt, Jenny Jaynes, Jamie Johnson, Theresa Johnson, M. Jones, Ruby Joyner, Nicole Kaas, Heather Kane, Karen King, Connie Knott, GeGe Larkins, T. Levy, Krystal ★. Lewis, DR. Krystal Lewis, Danielle Lovell, Michael Martinez, April McQueen, April McQueen(L.P.N. (Medical Staff)), David Miller, Ashleigh Mosely, Carlton Nance, Nashville, Tennessee, City of, Christopher Oden, Jeanette Page, Jeanette Page(L.P.N. (Medical Staff)), Nicholas Pallak, Ashley Pomales, S. Price, Michelle Ragland(L.P.N. (Medical Staff)), Michelle Ragland, Travis Ragland, Jerry Ramsey, Jan Rebar(R.N. (Medical Staff)), Jan Rebar, Bessie Ross, Tammy Ruck, Tyler Saggs, Sheena Simon, f/n/u Skelton, Annalisa Smith, Carla Sowell, Melinda Stephens, The Metropolitan Government of Nashville and Davidson County, Tennessee, Kenita Thomas, Lindsey Vallett, Sara VarDell, Agustin Villanueva, Justin Webb, Tom Webb, Loreena Williams, Biggs f/n/u, Jeff l/n/u(C.C.S. L.P.N.), Jeff l/n/u, filed by [redacted] Vaughn Harris, All Injured Pretrial Prisoners of Metro

= Inmate: VAUGHN S HARRIS =
= Inmate ID: 98865 =
= Location: MCC-L-L-14-1 =
= Total Transactions Printed: 13 =
= Printed: 03/04/2020 10:01 am CDT =

Type	Date	Amount	Running Total
Order	02/01/2020 08:29 pm CDT	$0.00	$0.00
Order	11/09/2019 07:36 pm CDT	$0.00	$0.00
Order Added By: Sherri Williams	10/06/2019 11:52 am CDT	$0.00	$0.00
Order	08/24/2019 08:24 pm CDT	$0.00	$0.00
Order	07/06/2019 09:35 am CDT	$0.00	$0.00
Order Added By: Sherri Williams	06/02/2019 11:04 am CDT	$0.00	$0.00
Order	04/20/2019 02:39 pm CDT	$0.00	$0.00
Order	03/16/2019 02:44 pm CDT	$0.00	$0.00
Order	02/09/2019 09:21 am CDT	$0.00	$0.00
Order Added By: Sherri Williams	12/02/2018 03:17 pm CDT	$0.00	$0.00
Order Added By: Sherri Williams	10/16/2018 11:00 am CDT	$0.00	$0.00
Order	09/01/2018 04:23 pm CDT	$0.00	$0.00
Order Added By: Sherri Williams	06/17/2018 02:10 pm CDT	$0.00	$0.00

KINYA Q JAMISON
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES NOVEMBER 08, 2022

Kinya Q Jamison

= Printing Completed =
= Summary of Transactions =

I swear under penalty of perjury I am indigent and have 0.00 funds in my inmate account, Vaughn Harris.

3A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

VAUGHN HARRIS,

Plaintiff,

Civil Action No. 3:15-cv-00356

vs.

HON. BERNARD A. FRIEDMAN

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al.,

Defendants.
_____/

OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is presently before the Court on (1) the motion of defendants Krystal Lewis, DDS ("Dr. Lewis"), Correct Care Solutions ("CCS"), and the Metropolitan Government of Nashville and Davidson County ("Metro Government") for summary judgment [docket entry 316], (2) the motion of defendant Beatrice Aluoch ("Aluoch") for summary judgment [docket entry 319], and (3) the motion of plaintiff Vaughn Harris for summary judgment [docket entry 318, PageID 3714-37]. Defendants have responded to plaintiff's motion, and plaintiff has filed a lengthy document, *see* docket entry 333, that appears intended to be a response to defendants' motions. Pursuant to Fed. R. Civ. P. 78(b), the Court shall decide these motions without a hearing.

Plaintiff, a pro se inmate confined at the Metro-Davidson County Detention Facility in Nashville, Tennessee, has filed hundreds, if not thousands, of pages of handwritten documents in this matter, which he has variously titled complaints, amended complaints, and supplemental pleadings (as well as countless motions). The Court has determined that the operative complaint is

the amended complaint plaintiff filed on June 18, 2015 [docket entry 36]. After a series of orders of dismissal, what remains in this case are (1) plaintiff's claim that Aluoch used excessive force against him by closing his arm in a cell door in January 2015, *see* Am. Compl. PageID 289, and (2) plaintiff's claim that Dr. Lewis was deliberately indifferent to his serious medical needs by denying or delaying dental care from November 1, 2014, to approximately April 20, 2015, *see id.* PageID 283-84. Apparently, plaintiff also seeks to hold CCS and Metro Government liable for Dr. Lewis' and Aluoch's violations of his rights.

Plaintiff and defendants seek summary judgment on these claims. Under Fed. R. Civ. P. 56(a), summary judgment is appropriate "if 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." "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* dispute as to any *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). Viewing the evidence in the light most favorable to the opposing party, summary judgment may be granted only if the evidence is so one-sided that a reasonable fact-finder could not find for the opposing party. *See id.* at 248-50; *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478-80 (6th Cir. 1989). In other words, "[a] material issue of fact exists where a reasonable jury, viewing the evidence in the light most favorable to the non-moving party, could return a verdict for that party." *Vollrath v. Georgia-Pacific Corp.*, 899 F.2d 533, 534 (6th Cir. 1990). "The pivotal question is whether the party bearing the burden of proof has presented a jury question as to each element of its case." *Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir. 1996).

Excessive Force Claim

Regarding this claim, plaintiff alleges that in January 2015, the "pod officer," Aluoch,

> saw me sitting in my shower shoes waiting to take a shower. She . . . told me I must change shoes immediately. So I went and changed my shoes. Upon com[]ing out of the cell, B. Aluoch closed me . . . in the 13,14 cell door and smashed my arm in the door. I had to scream to tell other inmates to get her to open the cell door and release my arm. When I was finally out of the door my arm was hurting and I asked to be sent to medical but was denied[1] and told to sit down by B. Aluoch, so I wrote a grievance to her D.C.S.O. superiors. The reply I received was they did not see me get injured clearly on camera by Weikal the Davidson County Sheriff's Office Administrator. . . . The incident happened in the month of January of 2015.

Am. Compl. PageID 289.

Plaintiff's grievance regarding this incident, dated November 19, 2014, is attached to Aluoch's summary judgment motion as an exhibit.[2] In this grievance, plaintiff wrote:

> Officer B. Louach [sic] closed my arm in the cell door and injured it when she made me take off my shower shoes even though I wanted to take a shower. This was witnessed by all inmates in 4-C on 11-19-2014 at 8 to 9 pm. She needs to be told shower shoes can be worn to the shower and to make sure and look threw the windows to make sure she do[es] not crush people.

PageID 3768.

Also attached to Aluoch's summary judgment motion is a copy of portions of plaintiff's deposition testimony. Plaintiff indicated that he could not remember which arm was injured but that "I think it'll be the right" when he testifies at trial. Pl.'s Dep. at 105, 112, 128.

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[1] Plaintiff has abandoned his claim that Aluoch denied him medical care. He does not raise this aspect of the claim in his summary judgment motion, and at his deposition plaintiff testified that he saw a nurse the same evening as the incident. Pl.'s Dep. at 114.

[2] At his deposition, plaintiff indicated that he believed this incident occurred in early January 2015, but that "it might have been 2014." Pl.'s Dep. at 105-106.

When asked to describe the injury, plaintiff testified that his "arm was hurting really bad" and "at least I think" it was the lower half of his arm that was injured. *Id.* at 110. Plaintiff thought his arm had a scratch from this incident and that his arm may have been bruised and swollen. *Id.* at 114, 133. Plaintiff also testified that he had "[m]aybe two seconds" to move his arm out of the way when the door began to close and that although he knew the door was closing he did not move his arm because he was holding a cup of juice. *Id.* at 216-17. Plaintiff conceded that he "just misgauged the timing of the door, the closing of it." *Id.* at 228.

Aluoch has also submitted a declaration from Captain William Dailey, a sheriff's office captain who is familiar with the cells in plaintiff's unit. He avers that the cell doors "made loud noise as they slip open and shut and were easily heard" and that "[e]ach cell door in unit 4-C took at least 4 seconds to close or open after the door first began to move." Daily Decl. ¶¶ 5-6.

Plaintiff, in his motion for summary judgment, presents no documents or other evidence to support this claim, but simply reiterates his view that his Eighth and Fourteenth Amendment rights were violated by "[t]he smashing of my arm in the cell door by D.C.S.O. guard Beatrice Aluoch . . ." Pl.'s Summ. J. Mot., PageID 3718. Likewise, plaintiff's response to this motion simply reiterates his allegations.

Plaintiff states that he was a pretrial detainee at the time of this incident. *See id.* Therefore, it is the Fourteenth Amendment that applies in this case, not the Eighth. *See Hopper v. Plummer*, 887 F.3d 744, 751-52 (6th Cir. 2018). When a pretrial detainee claims he has been the victim of excessive force, he must show "that the force purposely or knowingly used against him was objectively unreasonable." *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015). Conversely, "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due

process." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

In the present case, plaintiff has failed to show either that Aluoch acted "purposely or knowingly" or that she used force that was objectively unreasonable. Regarding the first prong, plaintiff testified that he does not know whether Aluoch could see him from her post at the control panel where she operated the cell door controls because "there were other inmates in the unit. And maybe that might have blocked her view." Pl.'s Dep. at 227. Plaintiff testified that when the door began to close he was in the process of leaving his cell and that Aluoch may have seen "my hand with the cup in it," but not his body in the doorway. *Id.* at 226. Captain Dailey avers that "[a]n inmate would not be visible to the correctional officer operating the control panel if the inmate was located inside of [his] cell." Dailey Decl. ¶ 7. Further, plaintiff conceded that the door did not close instantly, but that he had "[m]aybe two seconds" to move out of the doorway once the door began to close,[3] and that it was his own failure to "[]gauge the timing of the door," and his wish not to spill his cup of juice, that caused him not to move more quickly, unlike on previous occasions when he had safely moved out of the way of the closing cell door. Pl.'s Dep. at 216-17, 227-28. In short, on this record a jury could only find that Aluoch pressed the button to close plaintiff's cell door, not that she "purposely or knowingly used [force] against him." At most, a jury might find that Aluoch was negligent, but a constitutional claim cannot be based on negligence.

Regarding the second prong, plaintiff has produced scant evidence that he suffered an injury, i.e., that any force was used at all. Plaintiff's deposition testimony was so uncertain and equivocal about which arm was injured that a jury could find in his favor on this issue only by

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[3] As noted above, Dailey avers that the cell doors in plaintiff's unit took "at least 4 seconds" to close. Dailey Decl. ¶ 6.

engaging in impermissible speculation. Even if a jury could find that plaintiff's arm was caught in the door, plaintiff's testimony that he "think[s]" and "believe[s]" his arm was swollen and bruised, and that there was "[m]aybe a scratch," *id.* at 114, defeats his claim because a de mimimis injury suggests that de mimimis force was used. *See Leary v. Livingston Cty.*, 528 F.3d 438, 443-45 (6th Cir. 2008). As in *Leary*, plaintiff in the present case has produced no evidence that he suffered an "objectively verifiable injury." *Id.* at 443. Plaintiff's claim is independently defeated by his admission that he had at least two seconds (and more likely four seconds) to move out of the way when the door began to close, as this shows plaintiff had ample opportunity to avoid the "force," but he simply elected not to do so in order not to spill his cup of juice.

The Court concludes that plaintiff has failed to meet his burden of producing evidence that Aluoch purposely or knowingly used objectively unreasonable force against him. Consequently, the Court shall grant her motion for summary judgment and deny plaintiff's cross motion for summary judgment regarding this incident. To the extent plaintiff seeks to assert a *Monell* "policy or custom" claim against CCS and/or Metro Government for this incident, summary judgment is granted for defendants and against plaintiff on any such claim as well.

Denial of Dental Care Claim

Regarding this claim, plaintiff alleges that

> [i]n November of 2014 I . . . turn[ed] in a request to the dentist to have a temporary tooth filling put into a tooth that was starting a cavity due to a gravel being located in my D.C.S.O. food. When I was first seen by the dentist, Dr. A. Lewis, she said that my tooth was not too far deteriorated and did not need to be pulled. I said I did not want it pulled but I did want a temporary tooth filling. So she said to me take some antibiotics and come back. When I returned she claimed the tooth could not be saved. This was the same lie she had just told the patient before me on 11-18-2014. She has denied me

> dentle care for 5 months even though I have sent in repeated request for dentle care and grievances to the Davison County Sheriffs Office Medical Department. I feel this is cruel and unusual punishment malpractice and deliberate indifference to my health, and is a violation of my 8th and 14th Amendment rights to the United States Constitution. . . . I no longer trust this dentle person with my care and hope the Court files an order that my dentle care be placed with another dentist like Meharry Dentle School or another private dentist due to intentional neglect and malpractice by Dr. A. Lewis. Dr. A. Lewis intentionally inflicted cruel and unusual punishment on me . . . by denying me dentle care while in her official capacity as the Davidson County C.J.C. dentist and I am sueing her and Correct Care Solutions for this intentional pain and suffering. . . .
>
> I . . . never said I wanted to delay dentle care, the dentist, A. Lewis claimed the tooth could ~~not~~ be saved the first time I visited her. The second time I . . . visited the dentist A. Lewis, she had just told the patient seen just prior to me that he could not receive a temporary tooth filling also even though he had a cavity but the tooth was not in pain yet. This shows a pattern of neglect to D.C.S.O. jail patients dentle care by A. Lewis. The dentist should be cited for malpractice and deliberate indifference. I have been in constant pain for more than a month due to neglect. . . . There is a regular practice of denying dentle patients temporary tooth fillings and insted pulling inmates teeth even though the teeth could have been repaired or given a temporary filling. This is a custom of the C.J.C. dentist of Correct Care Solutions.

Am. Compl. PageID 283-84.

In his motion for summary judgment, plaintiff presents no documents or other evidence to support this claim, but simply reiterates his view that his Eighth and Fourteenth Amendment rights were violated when his dental care was denied or delayed. Plaintiff asserts:

> Dr. Krystal Lewis used Metro. Policy (Tenn. Code Ann. 29-20-205) to deliberately delay and refuse to fill my simple teeth cavities for about 4 months until the delay deteriorated my teeth to the teeth nerves. And then she repeatedly lied and claimed I could not get a root canal from Metro., even though I could under Correct Care Solutions policy, but not by Metro. Abuse policy (Tenn. Code Ann. 29-20-205), of delay and extract for profit, because Dr. Lewis had ill will against me anyway. But after I filed suit against her and my teeth

were in extreme pain, she refused me, Harris, pain relief medication for about 7 months or 8 and kept lieing, claiming I wanted my teeth #4 and #5 extracted, which I wanted to keep. Her deliberate indifference to my dentle pain relief care and repair of my teeth caused me terrible injury and (unnecessary unbearable pain and suffering) and is still causing great internal damage to my (health and remaining teeth and health). Also the unnecessary pain and suffering I endured and am still enduring for the last 4 years is malicious and sadistic (medical abuse) carried out under Metro. Abuse policy (Tenn. Code Ann. 29-20-205) in conjuction with a conspiracy of the other Metro. D.C.S.O. agents and C.C.S. medical staff personel . . . . Dr. Lewis knew from my repeated dentle medical request (that I was from date 3-17-2015 in great pain) and from her medical degree experience that I had a dentle medical condition of urgency serious medical need from date 10-29-2014, but Dr. Lewis refused to perform the proper procedure for filling (my the) cavity in a timely manner deliberately, because of animus against me from a prior dentle encounter and Metro. Policy rule (Tenn. Code Ann. 29-20-205) abuse. Dr. Lewis's culpability was greater than mere negligence, her omissions of cavity dentle care and teeth pain relief care were "for the very purpose of causing harm or with the knowledge that harm would result." Farmer v. Brennan, 511 U.S. at 835. This deliberate indifference to my dentle pain care needs and my need for a cavity filling or root canal in a timely manner made me suffer unnecessary cruel and unusual punishment by Dr. Lewis in violation of my 8th and 14th Amendment rights . . . .

* * *

Dr. Lewis's denial of dentle pain relief and dentle care for months to me constituted cruel and unusual punishment and wanton infliction of pain to cause unnecessary harm and injury. After (numerous months of sick calls from 3-16-2015 to 8-20-2015, grievances, and appeals) being filed to the Metro. D.C.S.O. and (C.C.S. medical staff), I was sent to Mettarry Dentle School with the wrong (dentle diagnosis) by Dr. Krystal Lewis. So I declined the unneeded extraction she had diagnosed of teeth #4 and #5, because she knew I had requested root canals for these teeth I wanted saved. This visit to Mettarry was on 8-20-2015, after 9 months of lies and delays by (Dr. Lewis Metro. Staff) and C.C.S. medical and dentle staff delay under (Nashville, TN Tenn. Code Ann. 29-20-205), even though they all knew I had a (medical condition) of urgency to save my teeth and avoid unnecessary pain and extraction of my good teeth. At the 8-20-

> 2015 dentle visit I was informed that I could save my teeth #4 and #5 by root canals, of which I informed Dr. Lewis of on return to the D.C.S.O. dentist.

Pl.'s Summ. J. Mot., PageID 3716-17, 3721.

Despite plaintiff's allegations that Dr. Lewis was deliberately indifferent to his pain and to his needs for dental care, the actual records of plaintiff's requests for care and of the care provided tell a much different story. On October 29, 2014, plaintiff submitted a healthcare request for "a temporary tooth filling to stop a cavity in my tooth." Aff. of Melinda Stephens (docket entry 331-1) Ex. 1. A nurse examined plaintiff on November 1, 2014, prescribed Tylenol, and referred him for a dental examination. *Id.* Exs. 2, 3. Dr. Lewis examined plaintiff on November 18, 2014, took x-rays, diagnosed "multiple small pit and fissure lesions Teeth #4 and 5 interproximal decay with missing tooth structure," and prescribed antibiotics and ibuprofen. *Id.* Ex. 4 Page ID 4058. She determined that the treatment options were either root canals or extraction. *Id.* Plaintiff "verbalized that he understood that root canal treatment is not offered here and elected to wait until he is transferred to prison." *Id.* Over the next ten days, plaintiff refused the prescriptions for Tylenol and ibuprofen because this was "too much medicine" and he was not in pain. *Id.* PageID 4063-77.

On January 7, 2015, plaintiff submitted another healthcare request, again claiming that "I need some temporary tooth fillings." *Id.* Ex. 5. A nurse examined him on January 12, 2015, prescribed Tylenol, and referred him for a dental examination. *Id.* Ex. 6. For the next week, plaintiff again refused these prescriptions because he was "not in pain now." *Id.* Ex. 7. On February 3, 2015, plaintiff was seen by Dr. Lewis, at which time she made the same findings and prescribed similar medications as before. *Id.* Ex. 8, PageID 4090. Her treatment notes state:

> Pt presented very combative and argumentive [sic]. Pt stated that I

> had informed him at previous appointment 11/18/14 that he is in need of two fillings. Informed patient that at last dental appointment that he was informed that the teeth would need RCT's in order to be saved. Pt verbalized at the 11/18/14 appointment that he understood that root canal treatment is not offered here and elected at that time . . . to wait until he is transferred to prison. Pt stated that he was not accepting recommended treatment and that all he needed was to have fillings placed. Pt stated that he did not want[] root canal and was not going to let me take out his tooth. Pt stated that his bottom tooth was hurting him. Pt refused to be compliant while trying to get a radiograph of lower bottom tooth while in dental chair. Pt became very rude. Copral [sic] Jones at that point escorted patient out of dental operatory.

Id. PageID 4088.

On March 18, 2015, plaintiff submitted another healthcare request, claiming he "need[ed] some pain relievers now due to the dentist refusing to fill my tooth." *Id.* Ex. 9. A nurse examined him on March 20, 2015, and prescribed Tylenol. *Id.* Ex. 10. On June 18, 2015, plaintiff submitted a sick call request, now claiming he had "a broken wisdom tooth that needs to be pulled or filled and other teeth that need fillings." *Id.* Ex. 11. A nurse examined him on June 28, 2015, prescribed ibuprofen, and referred him to the dentist. *Id.* PageID 4099-4102. But plaintiff refused to attend his June 23, 2015, appointment with Dr. Lewis, claiming that "I am in fear that the dentist dose not want to fix my teeth and I want my tooth exam rescheduled for next week or tomorrow." *Id.* Ex. 13.

The legal standards governing plaintiff's deliberate indifference claim are well known. The Sixth Circuit recently summarized them as follows:

> "There are two parts to the claim, one objective, one subjective. For the objective component, the detainee must demonstrate the existence of a sufficiently serious medical need." *Spears v. Ruth*, 589 F.3d 249, 254 (6th Cir. 2009) (quoting *Estate of Carter v. City of Detroit*, 408 F.3d 305, 311 (6th Cir. 2005)). . . .

> "For the subjective component, the detainee must demonstrate that the defendant possessed a sufficiently culpable state of mind in denying medical care." *Spears*, 589 F.3d at 254 (quoting *Estate of Carter*, 408 F.3d at 311). A defendant has a sufficiently culpable state of mind if he "knows of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). This means that "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.*
>
> A plaintiff need not show that the defendant acted with the very purpose of causing harm, but must show something greater than negligence or malpractice. *Id.* at 835, 114 S.Ct. 1970; *see also Rouster*, 749 F.3d at 446-47 ("The subjective requirement is designed 'to prevent the constitutionalization of medical malpractice claims.'" (quoting *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001)). The standard, then, has generally been equated with one of "recklessness." *Farmer*, 511 U.S. at 836, 114 S.Ct. 1970; *see also, e.g., Shadrick*, 805 F.3d at 737–38.

Winkler v. Madison Cty., 893 F.3d 877, 890-91 (6th Cir. 2018). However, "[a]llegations 'that more should have been done by way of diagnosis and treatment' and 'suggest[ions]' of other 'options that were not pursued' raise at most a claim of medical malpractice, not a cognizable Eighth Amendment claim." *Rhinehart v. Scutt*, 894 F.3d 721, 741 (6th Cir. 2018) (quoting *Estelle v. Gamble*, 429 U.S. 97, 107 (1976)). Further,

> [a] doctor is not liable under the Eighth Amendment if he or she provides reasonable treatment, even if the outcome of the treatment is insufficient or even harmful. *See Farmer*, 511 U.S. at 844, 114 S.Ct. 1970. . . . Accordingly, when a claimant challenges the adequacy of an inmate's treatment, "this Court is deferential to the judgments of medical professionals." *Richmond*, 885 F.3d at 940. That is not to say that a doctor is immune from a deliberate-indifference claim simply because he provided "some treatment for the inmates' medical needs." *Id.* But there is a high bar that a plaintiff must clear to prove an Eighth Amendment medical-needs claim: The doctor must have "consciously expos[ed] the patient to an excessive risk of serious harm." *Id.*

Rhinehart, 894 F.3d at 738-39. That is, "in order to show deliberate indifference, a plaintiff must allege more than negligence or the misdiagnosis of an ailment. 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.'" *Winkler,* 893 F.3d at 891 (citations and internal quotation marks omitted).

The Court assumes for present purposes that plaintiff's painful teeth constituted a serious medical need. Nonetheless, his Fourteenth Amendment claim fails because on this record no jury could find that Dr. Lewis was deliberately indifferent to that need. On the four occasions when plaintiff requested dental care (on October 29, 2014, and on January 7, March 18, and June 18, 2015), he was promptly seen and evaluated by a nurse, who prescribed pain medication. On the first and second occasions, plaintiff was also referred to Dr. Lewis, who likewise saw him promptly, examined him (including by taking x-rays on the first appointment and by offering to do so on the second appointment, only to be denied permission to do so by plaintiff), made a diagnosis, prescribed medications, and discussed treatment options. Those options included extraction or root canal treatment. Because plaintiff wanted to keep his teeth, he elected to wait until he was transferred to prison, where, unlike at the jail where he was housed at the time, root canals could be performed. When plaintiff requested dental care on the fourth occasion, June 18, 2015, he was seen and evaluated by a nurse and prescribed pain medication. He was also referred to Dr. Lewis, but he refused to attend the appointment. Obviously, Dr. Lewis cannot be faulted for not seeing plaintiff if he refused to appear for the appointment, just as she cannot be faulted for not taking x-rays of plaintiff's teeth if he would not permit her to do so.

Plainly, Dr. Lewis was not deliberately indifferent to plaintiff's dental care needs. To the contrary, she attended to plaintiff's needs promptly and reasonably. All plaintiff has shown is that he disagreed with Dr. Lewis' diagnosis and treatment, as he believed his decayed teeth could be filled, while she believed extraction or root canal treatment were the only options. As noted above, an inmate's disagreement with the diagnosis or course of treatment is not a basis for a deliberate indifference claim.

The Court concludes that plaintiff has failed to meet his burden of producing evidence that Dr. Lewis was deliberately indifferent to his serious medical (i.e., dental) needs. As plaintiff's claim against Dr. Lewis fails, his *Monell* "policy or custom" claims against CCS and/or Metro Government fail as well. Consequently, the Court shall grant these defendants' motion for summary judgment and deny plaintiff's cross motion for summary judgment regarding his dental care claims.

Conclusion

For the reasons stated above,

IT IS ORDERED that defendant Aluoch's motion for summary judgment [docket entry 319] is granted.

IT IS FURTHER ORDERED that the motion of defendants Dr. Lewis, Correct Care Solutions, and the Metropolitan Government of Nashville and Davidson County for summary judgment [docket entry 316] is granted.

IT IS FURTHER ORDERED that the motion of defendants Dr. Lewis, Correct Care Solutions, and the Metropolitan Government of Nashville and Davidson County for leave to file a corrected affidavit [docket entry 331] is granted.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment [docket entry 318, PageID 3714-37] is denied.

IT IS FURTHER ORDERED that all other pending motions are denied as moot.

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE
SITTING BY SPECIAL DESIGNATION

Dated: December 10, 2018
Detroit, Michigan

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

VAUGHN HARRIS	]	
Plaintiff,	]	
	]	
v.	]	**No. 3:15-0356**
	]	**Judge Sharp/Brown**
DAVIDSON COUNTY SHERIFF, et al.	]	
Defendants.	]	

To : Honorable Kevin H. Sharp, Chief District Judge

REPORT AND RECOMMENDATION

The plaintiff initiated this action with the *pro se* filing of a prisoner complaint (Docket Entry No. 1) brought pursuant to 42 U.S.C. § 1983.

Upon its receipt, the District Judge conducted a frivolity review of the complaint and dismissed all defendants, with the exception of Correct Care Solutions. *See* Docket Entry No. 3. The case was referred to the undersigned "to enter a scheduling order for the management of the case, to dispose or recommend disposition of any pre-trial motions under 28 U.S.C. §§ 636(b)(1)(A) and (B), and to conduct further proceedings, if necessary, under Rule 72(b), Fed. R. Civ. P., and the Local Rules of Court." *Id.*

The plaintiff filed a Motion to Amend/Correct Complaint (Docket Entry No. 12), but at the same time filed a Notice of Appeal (Docket Entry No. 14) to challenge the earlier dismissal of defendants. In light of the Notice of Appeal, plaintiff's Motion to Amend/Correct Complaint was terminated by the undersigned pending final disposition of the appeal. Docket Entry No. 18.

The plaintiff's appeal was dismissed for lack of jurisdiction. Docket Entry No. 28. He responded by asking the Court to revisit his Motion to Amend/Correct Complaint. Docket Entry No. 30. Because a district court can allow a plaintiff to amend his complaint to avoid a *sua sponte* dismissal of its claims, LaFountain v. Harry, 716 F.3d 944, 951 (6th Cir. 2013), the undersigned granted plaintiff's Motion. Docket Entry No. 33.

Presently before the Court is plaintiff's amended complaint (Docket Entry No. 12-1). Because the plaintiff is proceeding as a pauper, the Court is now obliged to review the complaint as amended to determine whether it is frivolous, malicious, or fails to state a claim. 28 U.S.C. § 1915(e)(2).

The plaintiff is a pre-trial detainee at the Davidson County Criminal Justice Center in Nashville. He brings this action against twenty one (21) defendants, challenging various conditions of his confinement.[1]

In order to state a claim arising under 42 U.S.C. § 1983, the plaintiff must plead and prove that a person or persons, while acting under color of state law, deprived him of some right guaranteed by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981).

The plaintiff has named the Davidson County Sheriff's Department as a defendant. However, a county sheriff's department is not a "person" subject to liability under § 1983. Petty v. County of Franklin, Ohio, 478 F.3d 341, 347 (6th Cir. 2007). Therefore, the claims against this defendant should be dismissed.

Two of the defendants, Granvisse Earl and D. Weikal, are being sued because they failed to

[1] The defendants are identified to a certain extent on page two of the amended complaint.

act upon the plaintiff's grievances. *See* Docket Entry No. 12-1 at pgs. 14 and 18. Relief under § 1983 is not available when a prison official's only involvement was to deny the plaintiff an administrative remedy for his grievances. Summers v. Leis, 368 F.3d 881, 888 (6th Cir. 2004). The plaintiff has alleged nothing more with respect to these two defendants. Consequently, the claims against them should be dismissed as well.

Pro se pleadings are subject to liberal construction. Haines v. Kerner, 404 U.S. 519 (1972). Nevertheless, liberal construction does not require the Court to create a claim which the plaintiff has not spelled out in his complaint. Wells v. Brown, 891 F.2d 591, 594 (6th Cir. 1989). A plaintiff is required to plead more than bare legal conclusions. Lillard v. Shelby County Board of Education, 76 F.3d 716, 726 (6th Cir. 1996). Thus, a *pro se* litigant must meet the basic pleading requirements for a complaint in order to state a cognizable claim for relief. Wells, *supra*. Plaintiff must identify the right or privilege that was violated and the role that each defendant played in the alleged violation. Dunn v. Tennessee, 697 F.2d 121, 128 (6th Cir. 1982).

In this regard, the plaintiff has named Sgt. Wright, M. Stephens, f/n/u Young, and John/Jane Doe (dental assistant) as defendants. These defendants are never mentioned in the plaintiff's Statement of Claim. As a consequence, he has failed to state a claim against them. In addition, the plaintiff alleges that defendant, Officer Jepson, gave him a cookie with "what looked like felt tipped ink spots on it" and would not give him another cookie to replace it. Docket Entry No. 12-1 at pg. 20. There are no allegations suggesting that the plaintiff was entitled to another cookie or that he got sick eating the cookie given to him by Officer Jepson. Thus, the plaintiff has failed to state a claim against this defendant.

The plaintiff has alleged that the defendants, B. Bourne and K. Rogers, through their actions,

denied him access to the courts. Docket Entry No. 12-1 at pg. 14. A prisoner has a First Amendment right of access to the courts. Bounds v. Smith, 430 U.S. 817, 821-823 (1977). To insure the meaningful exercise of this right, jail officials are under an affirmative obligation to provide inmates with access to an adequate law library, Walker v. Mintzes, 771 F.2d 920 (6th Cir.1985), or some alternate form of legal assistance. Procunier v. Martinez, 416 U.S. 396, 419 (1974). It is not enough, however, for the plaintiff to simply allege that an adequate law library or some alternate form of legal assistance has not been made available to him. He must also show that the defendants' conduct in some way prejudiced the filing or prosecution of a legal matter. Walker, *supra* at 771 F.2d 932; Kensu v. Haigh, 87 F.3d 172, 175 (6th Cir.1996).

The plaintiff has alleged no such showing of prejudice as a result of misconduct on the part of B. Bourne or K. Rogers. Therefore, he has failed to state an actionable claim against these defendants.

Finally, the plaintiff is suing Sgt. L. Farley for threatening to pepperspray him while being escorted to a segregation unit. Docket Entry No. 12-1 at pg. 14. It is well settled, though, that mere words, no matter how offensive, threatening, or insulting, do not rise to the level of a constitutional violation. McFadden v. Lucas, 713 F.2d 143, 147 (5th Cir.1983). Accordingly, the plaintiff has failed to state an actionable claim against Sgt. Farley.

RECOMMENDATION

For the reasons stated above, the undersigned has determined that the plaintiff has failed to state a claim against the Davidson County Sheriff's Department, Granvisse Earl, D. Weikal, B. Bourne, K. Rogers, Sgt. L. Farley, B. Jepson, Sgt. Wright, M. Stephens, f/n/u Young and John/Jane

Doe (dental assistant). Therefore, it is respectfully RECOMMENDED that the claims against these defendants be DISMISSED. 28 U.S.C. § 1915(e)(2).

Any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of this notice and must state with particularity the specific portions of the Report and Recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order regarding the Report and Recommendation. *See* Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

/S/ Joe B. Brown
Joe B. Brown
United States Magistrate Judge