The Appendix

A.1) The Petitioner filing a notice of Appeal from the United States Central District of Illinois, A copy is hereto attached as Appendix A.1 to this Petition.

A.2) The United States Court of Appeals for the 7th circuit of Illinois sent Petitioner the Court Appellate procedures and informed Petitioner to either pay the Appellate filing fee or file a Motion to proceed in forma pauperis, A copy is hereto attached as Appendix A.2 to this Petition.

A.3) The Petitioner notice of Appeal was docketed, A copy is hereto attached as Appendix A.3 to this Petition.

A.4) The Petitioner filed a Motion To Proceed In forma Pauperis, A copy is hereto attached as Appendix A.4 to this petition.

A.5) The United States Court of Appeals For The 7th circuit of Illinois ~~Hooded~~ Acknowledge that the United States Central District Court of Illinois "Denied" Petitioner Motion to proceed in forma pauperis, A copy is hereto Attached as Appendix A.5 to this Petition.

A.6) The Petitioner filed a Memorandum In Support Of PLRA Motion for leave to proceed on Appeal in forma pauperis with the United States Court of Appeals for the 7th circuit of Illinois, A copy is hereto Attached As Appendix A.6 to this Petition.

A.7) The Petitioner filed a Motion To Supplement with the United States Court of Appeals 7th circuit of Illinois, A copy is hereto Attached as Appendix A.7 to this Petition.

The Appendix Continues:

A.8) The United States Court of Appeals for the 7th circuit of Illinois denied Petitioner Motion to proceed in forma pauperis, A Copy is hereto Attached as Appendix A.8 to this Petition.

A.9) The Petitioner filed a Motion To Reconsider, with the United States Court of Appeals for the 7th circuit of Illinois, A Copy is hereto Attached as Appendix A.9 to this Petition.

A.10) The Petitioner filed A Motion for Clarification with the United States Court of Appeals for the 7th circuit of Illinois, A Copy is hereto Attached as Appendix A.10 to this Petition.

A.11) The United States Court of Appeals for the 7th circuit of Illinois, ORdered Petitioner to pay the docketing fee in full by February 3, 2020, or the case shall be dismissed, A Copy of said order is hereto Attached as Appendix A.11 to this Petition.

A.12) The United States Court of Appeals for the 7th circuit of Illinois issued A final order to dismiss Petitioner Appeal for failure to pay the $505.00 dollar filing fee. A Copy of said order is Attached as Appendix A.12 to this petition.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA C.R. 3(b) FINAL ORDER

February 20, 2020

No. 19-3178	DARNELL COOPER, Plaintiff - Appellant v. WEXFORD HEALTH SOURCES, INC., et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:17-cv-01462-JES Central District of Illinois District Judge James E. Shadid	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on January 09, 2020 and was given fourteen (14) days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b). Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

form name: **c7_PLRA_3bFinalOrder**(form ID: **142**)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

February 20, 2020

To: Shig Yasunaga
UNITED STATES DISTRICT COURT
Central District of Illinois
Peoria , IL 61602-0000

No. 19-3178	DARNELL COOPER, Plaintiff - Appellant v. WEXFORD HEALTH SOURCES, INC., et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:17-cv-01462-JES Central District of Illinois District Judge James E. Shadid	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

CHOOSE ONE OF THE FOLLOWING: no record to be returned

DATE OF COURT ORDER: 02/20/2020

NOTE TO COUNSEL:
If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date: **Received by:**

_____ _____

form name: **c7_Mandate**(form ID: **135**)

E-FILED
Friday, 11 October, 2019 12:52:44 PM
Clerk, U.S. District Court, ILCD

UONITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

DARNELL COOPER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	17-CV-1462
	)	
WEXFORD HEALTH SOURCES, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER GRANTING SUMMARY JUDGMENT

JAMES E. SHADID, U.S. District Judge.

Plaintiff proceeds pro se from his incarceration in Hill Correctional Center on an Eighth Amendment claim of deliberate indifference to his advanced periodontal disease.[1] On May 31, 2019, the Court granted summary judgment to some defendants and denied summary judgment to others with leave to renew. The Court asked for answers to questions about the treatment options available for Plaintiff's condition,

[1] Plaintiff settled a similar claim in the Northern District of Illinois, but the release applied only to claims arising before October 17, 2016. (d/e 26, Exhibit 51.) In that case, Plaintiff objected to the representation of court-appointed counsel. Judge Chang granted Plaintiff's request to discharge pro bono counsel but also stated that "the Court will not recruit another counsel because Plaintiff had unreasonable expectations of recruited counsel." Cooper v. Mitchell, 13-cv-5369 (N.D. Ill. 3/24/16 order.) This is Plaintiff's fourteenth case filed in federal court, according to the Pacer case locator. www.pcl.uscourts.gov

the reasons why the dentist (Defendant Strow) chose one treatment over another, and whether Wexford's[2] policy prohibiting surgical treatment of gum disease and prohibiting the treatment of severely advanced periodontal disease played a role in Defendant Strow's treatment decisions. The Court also asked how Plaintiff's condition is monitored or how Plaintiff would obtain a cleaning of his teeth, if a cleaning became necessary, since Hill Correctional Center at that time had no dental hygienist at the prison and cleanings were not done at the prison.

Plaintiff objects to the Court giving Defendants another chance at summary judgment, arguing that approach demonstrates bias in favor of Defendants and is not contemplated by the federal rules. Plaintiff asks this Court to recuse itself and have the case transferred back to Judge Myerscough. (d/e 117, p. 7.)

The Court has a duty to ensure that material factual disputes exist for trial, to avoid wasting the jury's time and the

[2]Wexford Health Sources, Inc.

Court's resources. *See* Fed. R. Civ. P. 56(e)(1)(court may give opportunity to remedy an improperly supported assertion of fact in summary judgment motion); Fed. R. Civ. P. 16(c)(at pretrial conference, court may eliminate frivolous claims and defenses and determine the appropriateness and timing of summary adjudication under Rule 56). There is no point in having a trial if a jury could not find in favor of Plaintiff. Plaintiff's request for recusal is denied. This Court has no bias against Plaintiff, and court rulings are not grounds for recusal. Khor Chin Lim v. Courtcall, Inc., 683 F.3d 378 (7th Cir. 2012)("Adverse decisions do not establish bias or even hint at bias.").

Moving to the merits, Dr. Strow has provided a supplemental affidavit, explaining again that Plaintiff's teeth are "morbidly clean," and that Dr. Strow believes Plaintiff's "gum and bone loss to be caused by his self-injurious ritualized aggressive brushing, which chronically inflamed his gums." (Dr. Strow Suppl. Dec., d/e 115-1 ¶ 3.) Dr. Strow continues:

> I understand the Court has inquired what the treatment options for Mr. Cooper's periodontal disease are. The course of action that would benefit Mr. Cooper is to stop

> inflaming his gums through his brushing routine. No cleaning, scaling and planning, or periodontal surgery to access deep pockets of calculus would do any good because Mr. Cooper does not have periodontal pockets with calculus. When bone level results in tooth mobility, extraction may be indicated. Because Mr. Cooper seemed to lack insight into his self-injurious behavior, I generated a mental health referral in hopes mental staff could help him.

Id. ¶ 4. This is consistent with Dr. Strow's earlier averment that Plaintiff's "teeth were morbidly clean to visual inspection. It appeared he had scoured away the cementum[3] on the sides of his teeth and inflamed his gums [] through aggressive brushing. Ritualized aggressive brushing can wear away tooth enamel, chronically inflame the gums, and eventually lead to gum and bone loss." (Strow 1/8/18 Dec. ¶ 5, d/e 21-1.) Dr. Strow averred that Plaintiff reported a 20-minute routine of painful flossing and brushing three times both morning and night. Id. ("Mr. Cooper's description of home care is excessive."). Plaintiff counters that he has never brushed his teeth more than twice a day. (Cooper Aff. ¶ 8, d/e 115.) Dr. Strow also determined that long-term pain medicine was

[3] Cementum is the "outermost covering of the tooth root." (Dr. Strow's Ans. Interr., d/e 83-3, p. 61.)

contraindicated for Plaintiff, because periodontal disease is asymptomatic, Plaintiff's complaints of pain did not objectively correlate to Dr. Strow's exam, and the long-term use of pain medicines can cause side effects and decrease the efficacy of those pain medicines. (Resp. to sick call request, d/e 1-1l; Strow 1/8/18 Aff. ¶ 7.)

Defendants do not dispute that a Wexford guideline on periodontal treatment states: "Non-surgical treatment of gum disease will be provided. This consists of deep cleaning (sub gingival scaling, root planning, gingival curettage). Teeth with severely advanced periodontal disease will not be treated." (Wexford Dental Guidelines, d/e 83-1 p. 14.) However, Dr. Strow avers that this guideline played no role in his decision because neither deep cleaning, periodontal surgery, nor referral to a periodontal specialist would help Plaintiff, since Plaintiff's condition is not caused by a pathological process like bacterial plaque. (Dr. Strow Suppl. Aff. ¶ 4 ("No cleaning, scaling and planning, or periodontal surgery would do any good because Mr. Cooper does not have periodontal pockets with calculus."); Strow 1/8/18 affidavit ¶ 9 ("Plaintiff does not need

a referral to a periodontal specialist for a deep scaling or root planning, as his teeth are clean.")

Plaintiff strongly disagrees with Dr. Strow's conclusions, but disagreement is not enough. Hyatt v. Marchant, 2019 WL 2566432 *2 (7th Cir. 2019)(not published in Fed.Rptr.)("Hyatt may disagree with the doctor's treatment decisions (e.g., refusing to authorize an MRI), but disagreement with the course of treatment does not support a claim for deliberate indifference."). The issue is whether Dr. Strow exercised his professional judgment within acceptable professional norms. Plaintiff has no admissible evidence to counter Dr. Strow's clinical observations. Based on those clinical observations, Dr. Strow concluded that a deep cleaning or periodontal surgery to remove calculus pockets would do no good because there was nothing to clean, no calculus to remove. The answer instead was for Plaintiff to stop his compulsive brushing and flossing. Plaintiff disputes that he brushes or flosses compulsively, but that does not put into dispute Dr. Strow's clinical observations which indicated otherwise to Dr. Strow. No rational juror could find on this record that Dr. Strow's approach fell outside the acceptable norms of professional judgment. *See* Roe v. Elyea,

631 F.3d 843, 857 (7th Cir. 2011)("Deliberate indifference arises "'if the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment.'")(quoted cite omitted); Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014)("A medical professional is entitled to deference in treatment decisions unless no minimally competent professional would have so responded under those circumstances."); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)(genuine dispute of material fact exists when a rational juror could find for the nonmovant.).

Plaintiff offers a letter from a dentist whom Plaintiff contacted which sets forth in general terms various possible treatments for periodontal disease (d/e 117, 3/14/2017 letter) such as deep cleaning, surgery, or extractions. The letter does not address or contradict Dr. Strow's professional judgment. The letter supports an inference that for someone with periodontal disease, a proper diagnosis and treatment plan requires a clinical evaluation, which is what Dr. Strow did. Id.

Plaintiff further contends that x-rays show the progression of Plaintiff's periodontal disease after Dr. Strow examined Plaintiff, but that is not be evidence that Dr. Strow was deliberately indifferent.[4] Progression is expected by Dr. Strow. In responding to Plaintiff's grievance, Dr. Strow stated that Plaintiff has a "long-standing oral condition of advanced periodontal disease and likely loss of teeth. Mr. Cooper may need to consider dentures in the future."[5] (d/e 83-3.) If Plaintiff is asserting that some kind of unidentified treatment might save Plaintiff's teeth, not providing Plaintiff with that treatment instead of offering extraction would not be deliberate indifference. *See, e.g.,* McGowan v. Hulick, 612 F.3d 636, (7th Cir. 2010)(deciding to extract tooth rather than fill tooth did not violate Eighth Amendment); Mathews v. Raemisch, 513 Fed.Appx. 605 (7th Cir. 2013)(not reported in Fed.Rptr.)(extraction instead of root canal to treat infected tooth did not violate Eighth Amendment)("this dispute is over nothing but the choice of one routine medical procedure versus another."); McDowell v. Pfister, 2017 WL 359199 (N.D. Ill.)(not published in F.Supp.)(policy of offering tooth

[5]This is hearsay, but the Court infers in Plaintiff's favor that Plaintiff could elicit this testimony from Dr. Strow at trial.

extractions rather than root canals did not violate Eighth Amendment)(citing Mathews, McGown and other cases).

As to the monitoring and cleaning of Plaintiff's teeth, Dr. Strow avers that Hill Correctional Center has now hired a dental hygienist, that Plaintiff may submit a dental request if Plaintiff is having dental issues, and that inmates' teeth are examined every two years under an IDOC directive. (Strow Suppl. Dec. ¶ 6.)

Plaintiff asserts that Dr. Strow falsely stated that Plaintiff had not requested dental care since November 2016. Dr. Strow admits that he was incorrect and that Plaintiff did attach 2017 dental requests to Plaintiff's complaint. Plaintiff maintains that he has submitted 14 dental care requests since November 2016. The Court accepts for purposes of this order that Plaintiff made those requests, but that does not change the result in this case. To the extent Plaintiff was seeking treatment for his periodontal disease other than what Dr. Strow decided, Dr. Strow had already made that decision. To the extent Plaintiff was seeking a cleaning, Plaintiff's teeth were already clean—*too* clean. Plaintiff points to the grievances of two other inmates who complained about the lack of a

dental cleaning, but that does not show that Plaintiff needed to have his teeth cleaned.

In short, even viewing the evidence in the light most favorable to Plaintiff and drawing all reasonable inferences in Plaintiff's favor, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), no rational juror could find that Dr. Strow was deliberately indifferent to Plaintiff's periodontal disease. With no claim against Dr. Strow, Plaintiff claims against the other Defendants necessarily fail.

IT IS ORDERED:

(1) The clerk is directed to terminate Plaintiff's motion to supplement, which was denied in a 9/26/19 text order that inadvertently did not include the motion number.

(2) Plaintiff's motion to object to the Court's 9/26/19 order is denied to the extent Plaintiff seeks reconsideration of that order. [125]. Further, the Court already assumed in this order that current x-rays would show the progression of Plaintiff's periodontal disease.

(3) Defendants' supplemental summary judgment motion is granted. [115]. Summary judgment is entered in favor of all the remaining Defendants. This action is dismissed with prejudice on

the merits. Plaintiff takes nothing. The parties will bear their own costs.

(4) This case is closed. The clerk is directed to enter judgment.

(5) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis should identify the issues Plaintiff will present on appeal. See Fed. R. App. P. 24(a)(1)(c). If Plaintiff does choose to appeal, he may be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

ENTERED: 10/11/2019
FOR THE COURT:

s/James E. Shadid
JAMES E. SHADID
UNITED STATES DISTRICT JUDGE

E-FILED
Monday, 21 October, 2019 11:10:03 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Darnell Cooper	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 17-1462**
	)	
Wexford Health Sources, Inc., Arthur Funk, Kevin Holloran, Wallace Strow, Gareth Beams, Robin Gillam, Lois Lindorff, Steve Gans, Stephanie Dorethy, John R. Baldwin.	)	
	)	
Defendants.	)	

JUDGMENT IN A CIVIL CASE

☐ **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **DECISION BY THE COURT.** This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this case is dismissed with prejudice on the merits. Plaintiff takes nothing. The parties will bear their own costs.

Dated: 10/21/2019

s/ Shig Yasunaga
Shig Yasunaga
Clerk, U.S. District Court

Additional material from this filing is available in the Clerk's Office.