NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 2, 2024*
Decided December 3, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1675

LOGAN DYJAK,
Plaintiff-Appellant,

v.

STACEY HORSTMAN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 21-3151-JES

James E. Shadid,
Judge.

ORDER

Logan Dyjak,[1] a civil detainee at the McFarland Mental Health Center, sued employees of the facility for due process violations in connection with limitations on

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

[1] As in Dyjak's previous appeals, we continue to use the they/them pronouns that Dyjak uses.

access to certain facility privileges. The district court granted summary judgment for the defendants because Dyjak could not link any alleged deprivation to the defendants' actions. We affirm.

We recount the undisputed facts, drawing reasonable inferences in Dyjak's favor. *Rakes v. Roederer*, 117 F.4th 968, 973 (7th Cir. 2024). Dyjak is civilly detained at McFarland, having been found not guilty of murder by reason of insanity. In mid-2018, Dyjak was diagnosed by a staff psychiatrist as having schizoaffective disorder "in sustained remission." On August 15, 2019, Dyjak was evaluated by another staff psychiatrist, Stacy Horstman, who prepared a comprehensive report six days later that modified Dyjak's diagnosis to schizoaffective disorder "in partial remission."[2] Horstman's report was relied upon by McFarland's clinical director, Jo-Ann Lynn, who updated the state court judge on Dyjak's psychiatric needs and McFarland's proposed treatment plan. Dyjak believes that Horstman and Lynn "arbitrarily altered" the diagnosis, which led the hospital to limit Dyjak's access to computers, educational programs, and the facility's café.

Patients at McFarland can be assigned one of several privilege levels that determines their freedom of movement. While a court order is required for the more expansive privilege levels, hospital staff may independently assign others, including "staff supervision," which permits patients to visit non-forensic or secure areas. Dyjak has remained at the staff supervision level since September 2018, even after the modified diagnosis. Horstman testified that Dyjak's diagnosis did not affect the privilege level, but Dyjak asserts that their privileges were tightened around the time of COVID-19's outbreak, when staff restricted their diet, access to gym facilities, and access to educational opportunities.

In July 2021, Dyjak sued Horstman and Lynn, along with hospital administrator Lana Miller, for violations under the Fourteenth Amendment. *See* 42 U.S.C. § 1983. Dyjak asserted, first, that Horstman and Lynn acted with deliberate indifference when they arbitrarily modified Dyjak's diagnosis. Dyjak also asserted that Miller failed to exercise professional judgment when she conditioned the restriction of privileges upon a "blanket administrative policy."

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[2] This diagnosis could be viewed as inconsistent with the defendants' statement in their answer "that on August 16, 2019, Defendant Horstman conducted a mental health evaluation and reaffirmed Plaintiff's original diagnosis of schizoaffective order in remission."

After the defendants moved for summary judgment, Dyjak sought extensions for the time to respond. The court granted Dyjak three extensions, warning in its third order that no further extensions would be granted. After Dyjak made their sixth request for an extension, the court denied the request and stated that it would rule on the defendants' motion without Dyjak's response.

Dyjak moved to reconsider that order, attributing the delay to (1) the court's earlier directive to prioritize responding in a different case, and (2) conditions of confinement that made a timely response more difficult. Dyjak separately moved under Federal Rule of Civil Procedure 56(d) for the court to postpone ruling on the summary judgment motion until they could present additional facts in opposition. The court denied both motions, noting the prior extensions given.

The court then granted the defendants' motion for summary judgment. Regarding Dyjak's claim about the modified diagnosis, the court found that the evidence did not show that the defendants provided Dyjak with mental health treatment that was objectively unreasonable—the standard for a pretrial detainee's claim of inadequate medical care. *See McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018). As for the claim about restricted privileges, the court concluded that the defendants' failure to give Dyjak access to non-secure settings did not constitute an atypical and significant hardship that would deprive Dyjak of a state-created liberty interest. *See Thielman v. Leean*, 282 F.3d 478, 484 (7th Cir. 2002).

Dyjak then moved to alter the judgment. Dyjak argued that the court violated Federal Rule of Civil Procedure 56(f)(2) by granting summary judgment on grounds not raised by the defendants. Dyjak maintained that the defendants' summary judgment motion treated his medical-care claim as grounded in procedural due process, while the court granted summary judgment under an objective-reasonableness standard. In Dyjak's view, the court needed to provide notice of its intent to grant the motion on this alternative ground, and time to respond. FED. R. CIV. P. 56(f)(2).

The court denied this motion, too. The court explained that it based its ruling on grounds that Dyjak had raised—the alleged disregard of Dyjak's mental-health needs upon the diagnosis being changed from "in remission" to "in partial remission." The court also pointed out that the defendants had raised the issue when they argued in their motion that there was no evidence that the diagnosis was erroneous. Regardless, the court added, Dyjak—having not responded to the summary judgment motion or contested defendants' evidence—could not show prejudice from not having an opportunity to respond to the court's analysis.

On appeal, Dyjak challenges the court's decision to enter summary judgment without a response, and revives the arguments made while seeking reconsideration—e.g., the difficult circumstances that pro se litigants face while confined. But while a court should consider all relevant circumstances surrounding a party's failure to respond to a motion, the determination whether to excuse a missed deadline is left to the district court's discretion. *See Miller v. Chicago Transit Auth.*, 20 F.4th 1148, 1153. (7th Cir. 2021). Given that the court had granted Dyjak three extensions and warned Dyjak that no further extension would be forthcoming, we see no abuse of discretion to deny a fourth.

Dyjak also renews the argument that the district court failed to provide adequate notice before granting summary judgment on grounds not raised by the defendants. But a court need not provide additional notice under Rule 56(f) when the parties are aware—as here—of the factual issues the court intends to rule on. *See Haley v. Kolbe & Kolbe Millwork Co.*, 863 F.3d 600, 613 (7th Cir. 2017); *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 854 (7th Cir. 2017). The defendants apprised Dyjak of the relevant facts that supported their argument for summary judgment—the psychiatric evaluation reports and the defendants' declarations—so Dyjak cannot claim to be surprised by the outcome.

Dyjak next raises a procedural challenge to the court's basis for entering summary judgment on the medical-needs claim. Invoking the principal pleadings, Dyjak argues that the court should have held the defendants to the admission in their answer that "on August 16, 2019, Defendant Horstman conducted a mental health evaluation and reaffirmed Plaintiff's original diagnosis of schizoaffective disorder in remission." But while a concession in an answer is a binding judicial admission, *see Tibbs v. Admin. Off. of the Ill. Courts.*, 860 F.3d 502, 508 n.1 (7th Cir. 2017), Horstman prepared a report several days later, on August 21, in which she diagnosed Dyjak's remission as only partial. The district court was entitled to consider this later report, and Dyjak has not offered any evidence to refute Horstman's modified diagnosis or show that it was objectively unreasonable.

As for the second claim regarding the restriction on privileges, Dyjak appears to argue that the district court applied an incorrect standard in assessing a civilly confined person's fundamental liberty interest. The court applied the "atypical and significant hardship" standard used in *Thielman*, 282 F.3d at 484 (citing *Sandin v. Conner*, 515 U.S. 472 (1995)), but Dyjak argues the applicable standard should be one of professional judgment, as set forth in *Youngberg v. Romeo*, 457 U.S. 307, 322–23 (1982). Under

Youngberg, a civil detainee is entitled to the exercise of professional judgment when the state subjects him to confinement. *Id.* Dyjak believes that Miller's conduct did not satisfy this standard because she (1) failed to petition the court to grant Dyjak greater privileges and (2) adopted blanket policies limiting Dyjak's privileges.

But even under *Youngberg*, Dyjak could not have prevailed. Dyjak cites no authority to suggest that the Constitution required Miller to present such a petition, let alone introduce any evidence that Miller adopted a blanket policy.

We have considered Dyjak's remaining arguments, and none has merit.

AFFIRMED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

LOGAN DYJAK,
Plaintiff,

v.

STACEY HORSTMAN *et al.*,
Defendants.

Case No. 3:21-cv-03151-JES

MERIT REVIEW ORDER

JAMES E. SHADID, United States District Judge:

Before the Court is a complaint filed under 42 U.S.C. §1983 by Plaintiff *pro se* Logan Dyjak, who alleges staff members at the McFarland Mental Health Center ("McFarland") in Springfield, Illinois, violated his constitutional rights. Plaintiff has also filed a motion for recruitment of counsel [5] under 28 U.S.C. § 1915(e)(1).

I. COMPLAINT

A. The Screening Standard

Plaintiff was adjudicated not guilty by reason of insanity under Illinois law and is currently is in the custody of the Illinois Department of Human Services. Thus, according to the Prison Litigation Reform Act, Plaintiff is not considered a prisoner. *See Kalinowski v. Bond*, 358 F.3d 978, 979 (7th Cir. 2004) (recognizing that a person civilly committed following a not guilty by reason of insanity verdict is not a prisoner).

The "privilege to proceed without posting security for costs and fees is reserved to the many truly impoverished litigants who, within the District Court's sound discretion, would remain without legal remedy if such privilege were not afforded to them." *Brewster v. North Am.*

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Van Lines, Inc., 461 F.2d 649, 651 (7th Cir. 1972). Additionally, a court must dismiss cases proceeding *in forma pauperis* "at any time" if the action is frivolous, malicious, or fails to state a claim, even if part of the filing fee has been paid. 28 U.S.C. § 1915(d)(2). Accordingly, this Court grants leave to proceed *in forma pauperis* only if the complaint states a federal claim.

In screening the complaint, the district court accepts the factual allegations as true, liberally construing them in the plaintiff's favor. *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). However, conclusory statements and labels are insufficient. Enough facts must be provided to "state a claim for relief that is plausible on its face." *Alexander v. United States*, 721 F.3d 418, 422 (7th Cir. 2013) (citation omitted).

B. Facts Alleged

Plaintiff identifies the following McFarland Defendants: Psychiatrists Stacey Horstman, Clinical Director Jo-An Lynn, and Administrator Lana Miller.

Plaintiff states that from February 2018 to August 2019, several different treating psychiatrists consistently diagnosed his "schizoaffective disorder" ("disorder") as "in remission." (ECF 1: pp. 3-4: 10-14.) In March 2019, Defendant Lynn concurred that Plaintiff's disorder was in remission. (*Id.* p. 4:13.) On August 16, 2019, Defendant Horstman conducted a mental health evaluation reaffirming Plaintiff's diagnosis. Plaintiff also notes that on August 21, 2019, Horstman authored a "comprehensive psychiatric report," reiterating that Plaintiff's disorder was in remission. (*Id.* p. 4:15.)

However, on August 23, 2019, Defendant Lynn authored a report documenting Plaintiff's disorder as "in partial remission." (*Id.* p. 4:16.) Plaintiff claims that Lynn's revised diagnosis was not based on Plaintiff's treatment but instead on "the treatment of another recipient." (*Id.* p.

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4:17.) Plaintiff asserts that Horstman and Lynn began using this new diagnosis to justify restrictions on Plaintiff's movement, computer use, and educational opportunities. Plaintiff claims that Defendant Miller was responsible for adopting policies and training personnel to preserve his due process rights.

C. Analysis

A civil detainee "enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests." *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982). "In determining whether the State has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness." *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982). "[A] decision, if made by a professional, is presumptively valid; liability may be imposed only when 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." *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982).

Broadly construing Plaintiff's facts and accepting them as accurate—as the Court must at the initial stage—Plaintiff's facts establish that Defendants Horstman and Lynn applied a diagnosis based on another patient's treatment to restrict Plaintiff's liberty impermissibly. Accordingly, the Court finds that Plaintiff states a Fourteenth Amendment claim against Horstman and Lynn.

However, the Court infers that Plaintiff's rationale for suing Defendant Miller is based solely on her executive and supervisory duties, which is inadequate to impose § 1983 liability.

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See Gossmeyer v. McDonald, 128 F.3d 481, 495 (7th Cir. 1997) ("The doctrine of respondeat superior cannot be used to impose § 1983 liability on a supervisor for the conduct of a subordinate violating a plaintiff's constitutional rights."); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (noting that because vicarious liability is inapplicable to § 1983 suits, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution."); *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012) ("To show personal involvement, the supervisor must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see." (internal quotation marks omitted)). Thus, Plaintiff fails to state a claim against Miller.

Accordingly, the Court grants Plaintiff's petition for leave to proceed *in forma pauperis*. The Court will consider Plaintiff's motion for appointment of counsel when this case is set for hearing under Federal Rule of Civil Procedure 16.

IT IS THEREFORE ORDERED:

1) **The Court GRANTS Plaintiffs' motion for leave to proceed in forma pauperis [3].**

2) **Pursuant to the Court's merit review of Plaintiff's complaint under 28 U.S.C. § 1915A, Plaintiff states a plausible Fourteenth Amendment claim against Defendants Horstman and Lynn for the restrictions imposed resulting from Defendants'' allegedly erroneous change in Plaintiff's mental health diagnosis. Any additional claims shall not be included in the case, except at the Court's discretion on motion by a party for good cause shown or under Federal Rule of Civil Procedure 15.**

3) **The Court directs the Clerk of the Court ("Clerk") to terminate Lana Miller as a Defendant.**

4) **This case is now in the process of service. The Court advises Plaintiff to wait until counsel has appeared for Defendants before filing any motions to give Defendants notice and an opportunity to respond to those motions. Motions filed before Defendants' counsel has filed an appearance will generally be denied as premature. Plaintiff need not submit any evidence to the Court at this time unless otherwise directed by the Court.**

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5) The Court will attempt service on Defendants by mailing each Defendant a waiver of service. Defendants have sixty days from service to file an Answer. If Defendants have not filed Answers or appeared through counsel within ninety days of the entry of this Order, Plaintiff may file a motion requesting the status of service. After Defendants have been served, the Court will enter an order setting discovery and dispositive motion deadlines.

6) Concerning a Defendant who no longer works at the address provided by Plaintiff, the entity for whom that Defendant worked while at that address shall submit to the Clerk said Defendant's current work address, or, if not known, said Defendant's forwarding address. This information shall be used only for effectuating service. Documentation of forwarding addresses shall be retained only by the Clerk and shall not be maintained in the public docket nor disclosed by the Clerk.

7) Defendants shall file an Answer within sixty days of the date the Clerk sends the waiver. A motion to dismiss is not an answer. The Answer should include all defenses appropriate under the Federal Rules. The Answer and subsequent pleadings shall be to the issues and claims stated in this Order. In general, an answer sets forth Defendants' positions. The Court does not rule on the merits of those positions unless and until Defendants file a motion. Therefore, no response to the Answer is necessary or will be considered.

8) This District uses electronic filing, which means that, after Defendants' counsel has filed an appearance, Defendants' counsel will automatically receive electronic notice of any motion or other paper filed by Plaintiff with the Clerk. Therefore, Plaintiff does not need to mail to Defendants' counsel copies of motions and other documents that Plaintiff has filed with the Clerk. However, this does not apply to discovery requests and responses. Discovery requests and responses are not filed with the Clerk. Instead, Plaintiff must mail his discovery requests and responses directly to Defendants' counsel. Discovery requests or responses sent to the Clerk will be returned unfiled unless they are attached to and the subject of a motion to compel. Discovery does not begin until Defendants' counsel has filed an appearance, and the Court has entered a scheduling order, which will explain the discovery process in more detail.

9) Defendants' counsel is granted leave to depose Plaintiff at his place of confinement. Defendants' counsel shall arrange the time for the deposition.

10) Plaintiff shall immediately notify the Court, in writing, of any change in his mailing address and telephone number. Plaintiff's failure to inform the Court of a change in mailing address or phone number will result in dismissal of this lawsuit, with prejudice.

11) **If a Defendant fails to sign and return a waiver of service to the Clerk within thirty days after the waiver is sent, the Court will take appropriate steps to effect formal service through the U.S. Marshals service on that Defendant and will require that Defendant to pay the total costs of formal service under Federal Rule of Civil Procedure 4(d)(2).**

12) **The Court directs the Clerk to enter the standard qualified protective order under the Health Insurance Portability and Accountability Act.**

13) **The Court directs the Clerk to attempt service on Defendants under the standard procedures.**

ENTERED January 4, 2022.

s/ *James E. Shadid*

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE

Orders on Motions

3:21-cv-03151-JES Dyjak v. Horstman et al

37,MERIT REVIEW HELD,PRISONER,PROSE,SERVICE ORDERED

U.S. District Court

CENTRAL DISTRICT OF ILLINOIS

Notice of Electronic Filing

The following transaction was entered on 5/24/2022 at 10:13 AM CDT and filed on 5/24/2022

Case Name: Dyjak v. Horstman et al

Case Number: 3:21-cv-03151-JES

Filer:

Document Number: No document attached

Docket Text:

TEXT ORDER entered by Judge James E. Shadid on 5/24/2022. Plaintiff's motion to reconsider the Court's Merit Review Order is granted. [14]. Plaintiff's claim against Defendants Horstman and Lynn is clarified to reflect that Defendants allegedly ignored their own diagnosis of Plaintiff. Additionally, Plaintiff states a claim against Defendant Miller based on an alleged blanket policy restricting movement in and out of the facility that is not based on the exercise of professional judgment. The clerk is directed to reinstate Defendant Miller and to send a waiver of service to Defendant Miller. (KE)

3:21-cv-03151-JES Notice has been electronically mailed to:

Emily May Rosenberger emily.rosenberger@ilag.gov, gls@ilag.gov, jessica.winters@ilag.gov, megan.heriford@ilag.gov

3:21-cv-03151-JES Notice has been delivered by other means to:

Logan Dyjak
MCFARLAND MENTAL HEALTH CENTER
Lincoln Hall
901 Southwind Road
Springfield, IL 62703

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

LOGAN DYJAK, Plaintiff,	)	
v.	)	No.: 21-3151-JES
STACEY HORSTMAN, et. al., Defendants.	)	

ORDER AND OPINION

Plaintiff, Logan Dyjak, is a civil detainee in the custody of the Illinois Department of Human Services ("IDHS") after having been adjudicated not guilty by reason of insanity ("NGRI"), on a murder charge.[1] Plaintiff is currently civilly committed to the McFarland Mental Health Center ("McFarland") in Springfield, Illinois, and has filed suit pursuant to 42 U.S.C. § 1983. As a result of his NGRI status, Plaintiff is considered a civil detainee or aquitee, rather than a prisoner. *See Dyjak v. Harper*, No. 22-1419, 2023 WL 5928160, at *3 (7th Cir. 2023). *See also Banks v. Thomas*, No. 11-301, 2011 WL 1750065, at *2 (finding that persons adjudicated NGRI are not prisoners under § 1915) (collecting cases). Defendants have filed a Motion for Summary Judgment (Doc. 42) and an accompanying Memorandum (Doc. 43). Despite being granted a series of extensions, Plaintiff has failed to respond. For the reasons indicated herein, Defendants' Motion for Summary Judgment (Doc. 42) is GRANTED.

[1] On November 20, 2012, Plaintiff was adjudicated NGRI for the murder of his grandmother. (Doc. 43-3 at 2).

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BACKGROUND

Plaintiff's complaint asserts that McFarland psychiatrist, Stacey Horstman, M.D., McFarland Clinical Director, Jo-An Lynn, and McFarland Administrator Lana Miller,[2] violated his Fourteenth Amendment rights. Plaintiff specifically pled that Defendant Horstman did not exercise sound medical judgment when she changed his diagnosis from "in remission" to "in partial remission." He claims that she did so, based at least in part, on a report Defendant Lynn had sent her which allegedly concerned another patient. Plaintiff alleges that he suffered "bodily movement" restrictions due to the revised diagnosis.

Plaintiff also pled that Defendants Lynn and Miller violated his due process rights when they did not formulate an individualized treatment plan which would have given him broader movement - access to non-restricted settings. The Court notes that there is significant, and sometimes confusing, overlap between the deliberate indifference and due process claims. In one, the lack of access is characterized as the injury that flowed from Defendants' alleged medical deliberate indifference. In the other, the lack of access, itself, is characterized as the constitutionally violative conduct, as the failure to provide non-secure settings privileges allegedly violated a due process liberty interest.

Lastly, Plaintiff asserts that Defendants Lynn and Miller are liable to him for not addressing his grievance complaining of Horstman and Lynn's alleged deliberate indifference.

As noted, Plaintiff has failed to respond to Defendants' motion for summary judgment. When the non-movant does not respond to the movant's statement of facts, the non-movant concedes the movant's version of the facts. *See Salatas v. Lake Cnty. Gov't*, No. 20-414, 2023 WL 4947916, at *2 (N.D. Ind. Aug. 2, 2023) (noting that where plaintiff has not responded and

[2] *See* Complaint (Doc. 1 at 2).

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the movant's statement of material facts—must "be weighed in light of other evidence rather than leading directly and without more to the conclusion of guilt or liability.'") (quoting *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 391 (7th Cir. 1995)) (emphasis omitted). If there remains a genuine disputed issue, '"summary judgment must be denied even if no opposing evidentiary matter is presented.'" *LaSalle*, 54 F. 3d at 392 quoting *Wienco Inc. v. Katahn Assocs., Inc.*, 965 F.2d 565, 568 (7th Cir. 1992) (in turn quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 160 (1970)).

SUMMARY JUDGMENT STANDARD

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); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). When presented with a motion for summary judgment, the Court must construe the record "in the light most favorable to the nonmovant and avoid[] the temptation to decide which party's version of the facts is more likely true." *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). Although a court must "construe all inferences in [a] non-movant's favor, [] he is not entitled to the benefit of inferences that are supported only by speculation or conjecture." *Boss v. Castro*, 816 F.3d 910,

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Corrections, 730 ILCS 5/5-2, *et seq. People v. Jurisec*, 766 N.E.2d 648, 653 (Ill. 2002). Section 5-2-4 authorizes the Illinois Department of Human Services (IDHS) to take custody of an individual (or insanity acquittee) in order to treat his or her mental illness while also protecting him or her and the community from his or her potential danger. *Id.* Under Section 5-2-4(b), every 90 days, the facility director is to file with the court a treatment plan report as to the acquitee's current status. This is so, as once an insanity acquittee has been committed to the custody of IDHS, "he may be detained only as long as he continues to be 'subject to involuntary admission' or 'in need of [inpatient] mental health services.'" *Jurisec*, 766 N.E.2d at 653 (quoting 730 ILCS 5/5-2-4(b)).

Plaintiff pled that in February 2018, McFarland psychiatrist, Dr. N. Vallabharen, diagnosed him with schizoaffective disorder in remission, and this diagnosis was "affirmed" by psychiatrist Dr. M. Reddy and social workers Tracey Mott, and Heather Parker. (Doc. 1 at 3). This diagnosis was re-confirmed by several psychiatrists and support staff throughout 2018. In March 2019, Defendant Dr. Horstman again found Plaintiff to be "in remission," with this diagnosis continuing until August 19, 2019, when Dr. Horstman issued an updated report finding Plaintiff in "partial remission." (Doc. 43-2 at 8-11). On September 17, 2019, Clinical Director Lynn forwarded the treatment team's *NGRI 90 Day Treatment Plan Report* ("*90 Day Report*") to the court. (Doc. 43-3). The Report documented Plaintiff's diagnosis as "Schizoaffective Disorder, bipolar type, in partial remission." *Id.* at 2. Plaintiff asserts that Defendants Horstman and Lynn are liable for "deliberate indifference" as to this allegedly faulty diagnosis.

Plaintiff claims that Defendants Horstman and Lynn's deliberate indifference in revising his diagnosis caused him injury; restrictions on computer use, inadequate nutrition, and restrictions on his movement within the facility. Defendant Horstman denies this, attesting that

the "'in partial remission' has no effect on his movement abilities or privilege status at McFarland facility." (Doc. 43-6 at 2). Defendant Horstman's claim is actually consistent with Plaintiff's deposition testimony where he admitted to being on Staff Supervision status, "the highest level of facility-provided privileges," even after the change in diagnosis. (Doc. 43-4 at 44-45). While Plaintiff testified vaguely as to unidentified privilege restrictions, these appear to have been in response to the Covid-19 pandemic, and the restrictions were admittedly not put in place "until quite a bit after the diagnosis change." (Doc. 43-4 at 43).

Defendant Horstman's affidavit also addresses the procedure to be followed in those cases where an acquitee's privilege levels are to be increased. She explained that the initial bodily movement or privilege level was determined by the acquitee's treatment team. (Doc. 43-6 at 2). Here, the treatment team was comprised of Dr. Horstman, Ms. Lynn, who was the Clinical Director at that time, a treating social worker, a nurse manager, and a member of the nursing staff. *Id.* If an increase was determined to be appropriate, the treatment team would send a request to the hospital administrator who would draft a letter to the court. The decision to increase privilege levels is ultimately made by the presiding judge. *Id.* at 3-4.

ANALYSIS

Deliberate Indifference[4]

As noted, to defeat summary judgment, the facts must support that Defendants acted purposefully, knowingly, or recklessly and that their treatment of Plaintiff was objectively unreasonable. *Andrews v. County of Sangamon*, No. 18-1100, 2021 WL 3733142, at *4 (C.D. Ill. July 1, 2021); *McCann*, 909 F.3d at 886.

[4] The Court uses the term "deliberate indifference" as that is how Plaintiff pled his claim but is mindful that the objectively unreasonableness standard, not the deliberate indifference standard applies in this case.

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Plaintiff challenges the "in partial remission" diagnosis on two levels. In the first, he asserts that Defendant Lynn provided a report to Defendant Horstman which "was not based on the treatment of the Plaintiff, but rather the treatment of another recipient." (Doc. 1 at 4). He does not identify this report or particularly claim that Dr. Horstman relied on it. Additionally, the record supports that it was Defendant Horstman who authored the August 19, 2019, medical report which was implemented in the *90 Day Report* Defendant Lynn provided to the Court. *See* Lynn Declaration (Doc. 43-5). Plaintiff offers nothing to explain the alleged mistake in identity. Dr. Horstman's August 19, 2019 medical report clearly described Plaintiff, and documented that he was "groomed neatly in street clothing and his cowboy hat." (Doc. 43-2 at 8-11). Defendant Horstman further noted that his thought process was "goal-directed but illogical at times," *Id.* at 10, stating:

> "Overall, Mr. Dyjak's behavior and course over the past year reflect fairly good day to day function within the controlled and structured setting of the hospital, but continued poor insight to the illness which led to his crime, and refusal of both medication treatment to prevent relapse and meaningful reflection and acceptance of responsibility for his crime. Rather than working with hospital staff toward wellness, understanding of his illness and prevention of recurrence he has taken an adversarial stance."

Id. This substantiates that Defendant Horstman, the individual who authored the medical report, was obviously familiar with Plaintiff. Under these circumstances, no reasonable jury could believe that either Horstman or Lynn was referring to someone other than Plaintiff.

All issues of misidentification aside, Plaintiff claims that the revised diagnosis evidenced deliberate indifference. He insists that his proper diagnosis was "in remission" and that Defendants Horstman and Lynn "ignored" their prior findings when they revised the diagnosis. Defendant Horstman disputes this, attesting in her affidavit that she issued her diagnosis of "Schizoaffective Disorder, Bipolar type, in partial remission" after conducting a Comprehensive

Psychiatric Evaluation on August 15, 2019. (Doc. 43-6 at 1-2). The report was issued after "extensive research into Logan Dyjak's history and reflecting his current condition and DSM-5 text and criteria." *Id.* at 1. Defendant Lynn, too, has provided an uncontroverted affidavit. There, she asserts that she is not a physician and had "no involvement in making a psychiatric diagnosis." (Doc. 43-5 at 1). While she authors the reports to the Court, she does not author the medical reports, or make, or change, a patient's diagnosis. *Id.*

There is evidence that Dr. Horstman downgraded Plaintiff's evaluation to "in partial remission" based on his failure to cooperate with the treatment plan and failure to accept responsibility for his crime. Plaintiff does not establish that this was objectively unreasonable. His sole support for his position is that, in the past, he had been diagnosed as in full remission. The Court is aware, however, that mental health is not static and is subject to change for either the better or worse. Here, there are no facts to refute Defendant Horstman's "in partial remission" diagnosis or to support that it was objectively unreasonable.

Plaintiff's deliberate indifference claim also fails as to Defendant Lynn. Defendant Lynn has provided uncontroverted testimony that she is not a physician, did not participate in the August 19, 2019 diagnosis, and did not make any changes to Defendant Horstman's diagnosis when she submitted the *90 Day Report* to the court. As a result, she did not have the authority to engage in the complained-of conduct and did not personally participate in it. *See Sanville v. McCaughtry,* 266 F.3d 724, 740 (7th Cir. 2001) (stating that §1983 liability is predicated on fault, so to be liable, a defendant must be "personally responsible for the deprivation of a constitutional right.") (quoting *Chavez v. Ill. State Police,* 251 F.3d 612, 651 (7th Cir. 2001)); *see also Edmondson v. Decatur Co. Det. Ctr.*, No. 21-00499, 2021 WL 3129457, at *3 (S.D. Ind. July 23, 2021).

Even if there were a material question as to the alleged deliberate indifference, Plaintiff fails to establish that it caused him injury. Plaintiff's claimed injuries are restrictions on computer use, restrictions on his movement within the facility, and inadequate nutrition due to restricted access to the cafe. Defendant Horstman has provided uncontroverted testimony that the "in partial remission" diagnosis did not result in any restricted access and Plaintiff seemed to acquiesce to this at his deposition. As noted, Dr. Horstman's uncontested affidavit attests, and Plaintiff did not dispute, that he remained on Staff Supervisions status and did not suffer any movement restrictions as a result of the revised diagnosis. The *McFarland Mental Health Center Procedural Guide* provided by Defendants documents that Staff Supervision status "allows the patient to go to non-forensic, secure areas, i.e., the cafeteria and Psychosocial Rehabilitation Area." (Doc. 43-1 at 2).

Plaintiff's testimony as to his computer use is too vague to raise a material issue of fact as he testified that while he had access to a computer on his unit, he could not "use the computer across the street... to take college courses." *Id.* at 49. In fact, he did not particularly connect this to the diagnosis change, generally stating: "Well, once they were able to start alleging that I was suffering from a mental illness and experiencing symptoms, they can use that as a justification to restrict my liberties." *Id.* at 48. Plaintiff had, of course, been found to be mentally ill and symptomatic his entire time at McFarland. *See generally* (Doc. 43-2). Furthermore, outside of contract, there is no constitutionally protected right to a college education. *See Charleston v. Bd. of Trustees of Univ. of Illinois at Chicago*, 741 F.3d 769, 772 (7th Cir. 2013) (stating "our circuit has rejected the proposition that an individual has a stand-alone property interest in an education at a state university.") (internal citations omitted). *See also Zimmerman v. Tribble*, 226 F.3d 568, 571 (7th Cir. 2000) ("[i[n *Higgason v. Farley*, 83 F.3d 807, 809 (7th Cir.1996), we held that the

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denial of access to educational programs does not infringe on a protected liberty interest'"); *accord Meisberger v. Cotton*, 181 Fed. Appx. 599, 601 (7th Cir. 2006).

Plaintiff's bald claim to poor nutrition is insufficient to establish a material issue of fact as to this issue. While he claims restricted access to the café, he does not claim that he did not otherwise have access to meals or that the meals he was provided were so lacking in nutrition he needed to supplement them. In addition, the *McFarland Mental Health Center Procedural Guide* provides that an individual in Staff Supervision status has the "liberty" to eat in the cafeteria. The Guideline also appears to use the terms "cafeteria" and "café" interchangeably. *See* (Doc. 43-1 at 2-3) stating, "Please note that any change in privilege level that affords a patient the liberty of dining in the cafeteria will take effect on the following day, to allow for processing of diet-related implications (See NUR117, and Attachment - Coming to Café)."

Here, a review of the record does not support that Defendant Horstman's revised diagnosis was objectively unreasonable, that it was based on information concerning another patient, or that Defendant Lynn made or revised the diagnosis. As a result, there is nothing to support that either Defendant acted with objective unreasonableness in relation to Plaintiff's diagnosis.

Plaintiff has also alleged that Defendant Miller and, perhaps, Lynn, are liable for failing to act on his grievance of the "deliberate indifference." As previously noted, a defendant cannot be liable for a constitutional deprivation, however, unless she personally participated or had direct responsibility for the deprivation. Here, Plaintiff did not plead that Miller exhibited deliberate indifference in his treatment or had anything to do with his revised diagnosis. As a result, she did not personally participate in the alleged deprivation and cannot be held liable for it. *See Sanville* 266 F.3d at 740; *Mitchell v. Kallas*, 895 F.3d 492, 498 (7th Cir. 2018) (citing

Wilson v. Warren Cty., 830 F.3d 464, 469 (7th Cir. 2016)). In addition, neither Defendant can be held liable merely for not attending to Plaintiff's grievance. *See Owens v. Hinsley,* 635 F.3d 950, 953 (7th Cir. 2011) ("[T]he alleged mishandling of [Plaintiff's] grievances by persons who otherwise did not cause or participate in the underlying conduct states no claim."); *Larue v. Estate of Obaisi*, No. 18-932, 2021 WL 3290919, at *9 (N.D. Ill. Aug 2, 2021) ("Involvement in the grievance process, standing alone, is insufficient to give rise to personal liability.").

Due Process

In Count II of the complaint, Plaintiff pled a due process claim against Defendant Lynn, whom he identified as the individual "responsible for adopting policies and training personnel to preserve Plaintiff's due process rights." (Doc. 1 at 7). In the prayer for relief, however, he named a different Defendant. There, Plaintiff indicated that he sought only injunctive relief, "ordering Defendant Miller to adopt policies and trained personnel to ensure treatment plans to allow consideration for the exercise of professional judgment in restricting bodily movement." (Doc. 1 at 10). Plaintiff's complaint was not initially interpreted as pleading against Defendant Miller, (Doc. 7), but on Plaintiff's motion to reconsider, the Court affirmed that, in addition to Defendant Lynn, Plaintiff had stated "a claim against Defendant Miller based on an alleged blanket policy restricting movement in and out of the facility that is not based on the exercise of professional judgment." *See* May 24, 2022 text order.

In support of these claims, Plaintiff explains that at a prior point, § 5/5-2-4 allowed acquitees in DHS custody to be placed in a non-secure setting if ordered by the court. Plaintiff had a treatment plan in place with the court when the statute was amended. The amendment,[5] however, struck all reference to placement in a non-secure setting, so the court no longer had the

[5] *Proceedings after Acquittal by Reason of Insanity*, 730 ILCS 5/5-2-4 (2019) (amended 2021).

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discretion to order it. Plaintiff claims that after the amendment, McFarland staff would write treatment plans which allowed non-secure access based on the treatment team's "professional judgment," rather than the previously required court order. *Id.* at 6. While it is not clear, Plaintiff appears to assert a two-fold argument. The first is a lost opportunity, that Defendants never petitioned the Court to place him in a non-secure setting when it was still possible to do so. The second is that, after the amendment, staff allowed some acquitees access to non-secure settings, but not Plaintiff. Plaintiff specifically alleges that due to an otherwise unidentified "blanket policy," Defendant Lynn failed to make an "individualized determination[]" as to his eligibility for non-secure setting privileges. (Doc. 1 at 9).

The Fourteenth Amendment prohibits a state actor depriving "'any person of life, liberty, or property, without due process of law.'" *Roach v. Indiana Dept of Correction*, No. 21- 371, 2022 WL 1184559, at *2 (N.D. Ind. Apr. 20, 2022) (quoting U.S. Const. amend. XIV, § 1). For Fourteenth Amendment liability to attach, the Plaintiff must have had a protected liberty or property interest at stake. *Id.* (citing *DeWalt v. Carter*, 224 F.3d 607, 613 (7th Cir. 2000), *abrogated on other grounds by Savory v. Cannon*, 947 F.3d 409 (2020). Here, Plaintiff claims a liberty interest in being allowed access to non-secure settings. Although asserting this lack of access, Plaintiff testified that, at times, staff allowed him supervised and unsupervised off-ground privileges. (Doc. 43-4 at 45.) He asserts, however, that while he enjoyed these privileges, he did not have the "legal right to be using them," and that "they" violated his due process rights "by not securing those privileges for me…". *Id.* In other words, that Defendants Lynn and Miller did not request a court order when such relief was available, and did not grant non-secure setting privileges based on the team's professional judgment, when court-ordered relief was no longer available.

In the case of a convicted prisoner, "Due process is only required when punishment extends the duration of confinement or imposes 'an atypical and significant hardship on him in relation to the ordinary incidents of prison life.'" *Roach*, 2022 WL 1184559, at *2 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). This "atypical and significant hardship" standard is also applied to those civilly committed. *See Thielman v. Leean*, 282 F.3d 478, 483–85 (7th Cir. 2002) (finding as to a civilly committed sexually dangerous detainee, that *Sandin* "applies with equal force to persons confined under Chapter 980."[6]). *See id.* (explaining that, while the plaintiff was not a prisoner, "his confinement has deprived him (legally) of a substantial measure of his physical liberty.")

The *Thielman* court found that plaintiff was required to "identify a right to be free from restraint that imposes atypical and significant hardship in relation to the ordinary incidents of his confinement." *Id.* at 484. There, the Plaintiff asserted that a prior statute that allowed the use of handcuffs during transport, and which was amended to allow the additional use of a waistbelt and leg irons, violated due process. The Court disagreed, finding that the enhanced security measures did not amount to an '"atypical'" and '"significant'" hardship. Instead, there were merely an '"incremental' deprivation'" which did not implicate "a state-created liberty interest in the wake of *Sandin*." *Id.*

Here, Plaintiff testified that on occasion, he had access to non-secure settings, but this was not officially sanctioned in a court order or treatment plan. Plaintiff appears to believe that his commitment should not have imposed any restrictions on his liberty. Referring to himself while testifying at his deposition, he stated, "they do not have the ability to restrict an individual's liberties when they are not suffering from a mental illness." (Doc. 43-4 at 32-33).

[6] The Wisconsin *Sexually Violent Person Commitments Act*, Wis. Stat. Ann. § 980.01.

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He also testified that due to his placement on the Monroe minimally secure unit, he was "supposed to be provided with basically every liberty." *Id.* at 38-39. Contrary to Plaintiff's beliefs, Defendants had the authority exercise some control over his liberties without running afoul of due process. Plaintiff has pled nothing to support that his intermittent lack of access to non-secure settings resulted in an atypical and significant hardship in relation to the "ordinary incidents' of his civil confinement." *Thieman*, 282 F.3d at 484.

Qualified Immunity

As the Court has found that Defendants conduct did not violate Plaintiff's Fourteenth Amendment rights, it need not address whether Defendants are entitled to qualified immunity. *See Rogers v. Love*, No. 21-4048, 2024 WL 268385, at *6 (C.D. Ill. Jan. 24, 2024) (citing *Johns v. Tinsley*, No. 16-1106, 2018 WL 10811472, at *5 (C.D. Ill. Mar. 7, 2018) (in turn citing *Van den Bosch v. Raemisch*, 658 F.3d 778, 787 n. 9 (7th Cir. 2011)).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS Defendants' Motion for Summary Judgment (Doc. 42). The Clerk is directed to enter judgment and close this case.

ENTERED: This 15th day of February 2024.

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

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

LOGAN DYJAK, Plaintiff,	)	
v.	)	No.: 21-3151-JES
STACEY HORSTMAN, et. al., Defendants.	)	

ORDER

Plaintiff, Logan Dyjak, is a civil detainee in the custody of the Illinois Department of Human Services ("IDHS") after having been adjudicated not guilty by reason of insanity ("NGRI"), on a murder charge. As a result of his NGRI status, Plaintiff is considered a civil detainee or acquitee, rather than a prisoner. *See Dyjak v. Harper*, No. 22-1419, 2023 WL 5928160, at *3 (7th Cir. 2023). *See also Banks v. Thomas*, No. 11-301, 2011 WL 1750065, at *2 (S.D. Ill. May 6, 2011) (finding that persons adjudicated NGRI are not prisoners under § 1915) (collecting cases).

On July 14, 2023, Defendants filed a motion for summary judgment, to which Plaintiff failed to timely respond, despite having been granted several extensions. On February 15, 2024, the Court granted Defendants' motion for summary judgment, finding as to the Count I allegations that there was insufficient evidence that Defendants provided objectively unreasonable mental health care to Plaintiff. As to Count II, the Court found that Plaintiff had not adequately pled a procedural due process claim based on Defendants' failure to allow him access to non-secure settings as this did not represent an atypical and significant hardship which would implicate a protected liberty interest. (Doc. 54 at 14) (citing *Roach v. Indiana Dept of*

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Correction, No. 21- 371, 2022 WL 1184559, at *2 (N.D. Ind. Apr. 20, 2022) (in turn quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).

On March 12, 2024, Plaintiff filed a response to summary judgment even though judgment had already entered. He now files a Motion to Alter Judgment (Doc. 58), asserting that the Court misapprehended the allegations of his complaint. Plaintiff asks that the summary judgment order be vacated and his response to summary judgment be considered. For the reasons indicated, (Doc. 58) is DENIED.

STANDARD

Plaintiff's motion is construed as a timely motion to alter or amend a judgment under Fed. R. Civ. P. 59(e). "A Rule 59(e) motion must either show that the court 'committed a manifest error of law or fact' or that 'newly discovered evidence precluded entry of judgment.'" *Pannell v. English*, No. 22-2894, 2024 WL 1155451, at *2 (7th Cir. Mar. 18, 2024) (quoting *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 955 (7th Cir. 2013)). "[A] Rule 59(e) motion is not an appropriate vehicle for advancing arguments or theories that could and should have been made before the district court rendered a judgment." *Id.* (quoting *Ben-Yisrayl v. Neal*, 857 F.3d 745, 747 (7th Cir. 2017)). "Relief under Rule 59(e) is an 'extraordinary remedy reserved for the exceptional case.'" *Martin v. Actavis Pharma, Inc.*, 71 F.4th 617, 620 (7th Cir. 2023) (quoting *Vesey v. Envoy Air, Inc.*, 999 F.3d 456, 463 (7th Cir. 2021)).

ANALYSIS

Plaintiff had filed a two-count complaint, pleading in Count I that Defendant Horstman did not exercise sound medical judgment when she changed Plaintiff's diagnosis from "Schizoaffective Disorder, bipolar type, in remission" to "in partial remission." (Doc. 43-3 at 2). Plaintiff claimed that Defendant did so, based on a report Defendant Lynn had sent her which

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allegedly concerned another patient, and that both Defendants "were deliberately indifferent to Plaintiff's treatment needs . . . arbitrarily altered Plaintiff's diagnosis, rather than determining such through the exercise of medical judgment . . . [and] provided the Plaintiff with treatment that wasn't even based on medical judgment." (Doc. 1 at 8)[1]. In Count II, Plaintiff pled that Defendants Lynn and Miller violated his due process rights when they did not formulate an individualized treatment plan that would have given him broader movement, access to non-restricted settings.

On January 4, 2022, the Court conducted a merit review of the complaint, summarizing it as stating "a plausible Fourteenth Amendment claim against Defendants Horstman and Lynn for the restrictions imposed resulting from Defendants' allegedly erroneous change in Plaintiff's mental health diagnosis." (Doc. 7 at 4). Plaintiff later moved to reconsider the merit review order. (Doc. 14). The Court granted the Motion, amending the merit review order by text order of May 24, 2022, to state "Plaintiff's claim against Defendants Horstman and Lynn is clarified to reflect that Defendants allegedly ignored their own diagnosis of Plaintiff. Additionally, Plaintiff states a claim against Defendant Miller based on an alleged blanket policy restricting movement in and out of the facility that is not based on the exercise of professional judgment."

Plaintiff asserts that the Court misconstrued the complaint when it interpreted it as asserting claims of deliberately indifferent (actually objectively unreasonable) mental health treatment, and violations of procedural due process. Plaintiff claims, somewhat obliquely, that he had really pled "a substantive due process medical care claim." Plaintiff's pleading was

[1] In its summary judgment order, the Court sometimes used the term "deliberate indifference" as that is how Plaintiff pled the claim. It was noted, however, that as Plaintiff was a civil acquittee rather than a convicted prisoner, the Fourteenth Amendment objective reasonableness standard applied, under which Plaintiff need only establish that Defendants' actions were objectively unreasonable. (Doc. 54 at 4) (citing *Rice v. Kim*, No. 20-3693, 2023 WL 8281571, at *3 (N.D. Ill. Nov. 30, 2023) (finding that in the case of a detainee, the Fourteenth Amendment's "objective reasonableness" standard applies, not the Eighth Amendment's "deliberate indifference" standard applied to convicted prisoners)).

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somewhat murky with the Court noting in its summary judgment order, "there is significant, and sometimes confusing, overlap between the deliberate indifference and due process claims. In one, the lack of access is characterized as the injury that flowed from Defendants' alleged medical deliberate indifference. In the other, the lack of access, itself, is characterized as the constitutionally violative conduct. . . ". (Doc. at 2).

It is clear, however, that Count I of the complaint asserted deliberate indifference to mental health needs, not a violation of substantive due process.[2] For their part, Defendants interpreted this claim as asserting that they, "made an erroneous mental health diagnosis to justify restrictions on Plaintiff's movement, computer use, and education opportunities." (Doc. 43 at 7). Despite the reference to an erroneous diagnosis, Defendants tailored their arguments to the procedural due process issue without an analysis of objective unreasonableness.

While Plaintiff now claims he had pled a substantive due process claim, the Court did not identify this in its merit review order and, although Plaintiff contested portions of the merit review order, he did not contest this. While the complaint was not a model of clarity, the Court understood Plaintiff's pleading and finds no error in its interpretation of it. The Court now affirms that Count I of the complaint did not allege a substantive due process claim and the failure to address this in its summary judgment order does not represent a manifest error of law or fact. It appears, rather, that Plaintiff is attempting an "end-run" around summary judgment, alleging that the Court misconstrued the complaint. Plaintiff will not be allowed to use a motion to reconsider as a vehicle to amend his complaint after the fact. *See Ramsey v. Mellinger*, 182

[2] To allege a substantive due process claim, a plaintiff must allege that the defendants violated a fundamental right or liberty under color of state law and that their actions were "so arbitrary and irrational as to shock the conscience," allegations not pled here. *Sharp v. Cmty. High Sch. Dist. 155*, No. 21-50324, 2023 WL 2711850, at *4 (N.D. Ill. Mar. 30, 2023) (citing *Nelson v. City of Chicago*, 992 F.3d 599, 604 (7th Cir. 2021)).

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F.3d 922 (7th Cir. 1999) (noting, "a party cannot amend his pleadings to avoid a motion for summary judgment.").

Plaintiff also alleges that under Rule 56(f)(2), *Judgment Independent of the Motion,* the Court based the order on a deliberate indifference, (objective unreasonableness) claim, which was not raised by Defendants; and the Court should have given Plaintiff an opportunity to respond. *See McQuay v. I.D.O.C.*, No. 18-00106, 2021 WL 308181, at *7 (S.D. Ind. Jan. 29, 2021) ("under Federal Rule of Civil Procedure 56(f), district courts may consider summary judgment 'on grounds not raised by a party' '[a]fter giving notice and a reasonable time to respond.' This involves offering the parties 'the chance to marshal evidence and argument' on their positions."). (internal citations omitted). The summary judgment order, however, was based on grounds which Plaintiff, himself, had raised - the alleged deliberate indifference to his mental health needs due to his diagnosis being changed from "in remission" to "in partial remission." (Doc. 54 at 8).

In addition, Defendants affirmatively stated in their motion that "[t]here is no evidence Defendants made an erroneous diagnosis." (Doc. 43 at 2). Defendants examined this in a procedural due process context rather than an objectively unreasonableness context, but the argument was made.[3] In evaluating Defendants' position, the Court first examined whether there was sufficient evidence of an erroneous mental health diagnosis. It found there was no such error, with the result that Defendants did not cause any restrictions in Plaintiff's movements in violation of due process. *See* Rule 56(a). "The court shall grant summary judgment 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." Plaintiff failed to refute Defendants' claim and cannot establish

[3] Defendants asserted that they did not violate due process as there was no "erroneous mental health diagnosis" which resulted in restrictions on Plaintiff's bodily movement. (Doc. 43 at 7).

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that the summary judgment order was based on "grounds not raised by a party." *See* Rule 56(f)(2). As a result, the Court was not required to give Plaintiff an additional opportunity to respond.

Even if it were otherwise, Plaintiff cannot succeed on this issue unless he can establish that he suffered prejudice from not having an opportunity to respond. *See Smith v. Perkins Bd. of Educ.*, 708 F.3d 821, 829 (6th Cir. 2013) ("even when the district court fails to provide adequate notice to the party against whom summary judgment is granted, its judgment will be upheld unless the losing party can demonstrate prejudice. 'Otherwise,' remanding the case to the district court would merely entail an empty formality with no appreciable possibility of altering the judgment.") (quoting *Excel Energy, Inc. v. Cannelton Sasles Co.*, 246 F. App'x. 953, 959 (6th Cir. 2007)). *See Oldham v. O.K. Farms, Inc.*, 871 F.3d 1147, 1150 (10th Cir. 2017) ("[E]ven if such notice is lacking, we will still affirm a grant of summary judgment if the losing party suffered no prejudice from the lack of notice.") (quoting *Johnson v. Weld County*, 594 F.3d 1202, 1214 (10th Cir. 2010)).

In this case, Plaintiff did not respond to summary judgment or contest Defendants' evidence supporting that the revised diagnosis did not represent an error in medical judgment. As this remains undisputed, Plaintiff cannot establish that Defendants improperly revised his diagnosis, causing movement restrictions and violating due process.

Plaintiff further asserts under Rule 56(f)(2), that he should have been given an additional extension in which to respond to summary judgment. *See Lynch v. Flowers Foods Specialty Group*, No. 08-0554, 2010 WL 1779694, at *1 (E.D. Wis. Apr. 29, 2010) ("Rule 56(f)(2) provides that when a party opposing a motion for summary judgment 'shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may ...

order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken.'"). Plaintiff claims that he needed additional time due to a lack of photocopy services (Doc. 57 at 7-8), eventually filing a tardy 452-page response. He also asserts, as he did on prior occasions, that he was involved in other litigation that he had "prioritized" over this case. The Court noted this in its January 29, 2024 text order stating, "The Court finds Plaintiff's continued failure to timely address this matter and admitted strategy in deprioritizing this case in favor of others troublesome and insulting." The Court, nonetheless, granted the extension, advising Plaintiff that no further extensions would be allowed. This was a warning which Plaintiff ignored at his peril.

QUALIFIED IMMUNITY

As the Court has found that Defendants conduct did not violate Plaintiff's Fourteenth Amendment rights, it need not address whether Defendants are entitled to qualified immunity. *See Rogers v. Love*, No. 21-4048, 2024 WL 268385, at *6 (C.D. Ill. Jan. 24, 2024) (citing *Johns v. Tinsley*, No. 16-1106, 2018 WL 10811472, at *5 (C.D. Ill. Mar. 7, 2018) (in turn citing *Van den Bosch v. Raemisch*, 658 F. 3d 778, 787 n.9 (7th Cir. 2011)).

CONCLUSION

For the reasons stated above, the Court hereby DENIES Plaintiff's Motion to Alter Judgment (Doc. 58).

ENTERED: This 26th day of March 2024.

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

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