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United States District Court, N.D. Illinois, Eastern Division.

Orlandis BOLDEN, et al., Plaintiffs,
v.
Amy ZERNICKE, et al., Defendants.

No. 94 C 6203. | Aug. 30, 1999.

Opinion

MEMORANDUM OPINION AND ORDER

WILLIAMS, J.

***1** Plaintiffs Orlandis Bolden ("Bolden") and James Garland ("Garland") brought this action against defendants, who are officials and employees of the Stateville Correctional Center ("Stateville"). Plaintiffs allege that defendants' conduct constitutes cruel and unusual punishment in violation of the Eighth Amendment and 42 U.S.C. § 1983. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants move for summary judgment. For the reasons set forth below, the court grants in part and denies in part defendants' for motion summary judgment.

Background

Bolden and Garland are in the custody of the Illinois Department of Corrections ("Department"). (Def.'s 12M ¶ 1.) Bolden resided at Stateville from February 16, 1988 until November 21, 1995 but was then transferred to the Menard Correctional Center. (Def.'s 12M ¶ 2.) Garland currently resides at Stateville. (Def.'s 12M ¶ 3.) Both Bolden and Garland claim that the Stateville conditions of confinement are so severe as to constitute cruel and unusual punishment. Specifically, they claim that Stateville has inadequate plumbing, poor ventilation, unclean cells, and inappropriate bedding.

Both Bolden and Garland allegedly found worms in their water supply which they believe resulted from Stateville's antiquated plumbing system. (Def.'s 12M ¶¶ 6–9.) Defendants deny this allegation, and claim that the plumbing system does not allow for contaminants such as worms to enter the water supply. (Def.'s 12M ¶ 168.) Portions of the Stateville plumbing system are over 60 years old, but Stateville provides regular preventive maintenance. (Def.'s 12M ¶ 160.) The aged plumbing system causes problems with the water supply on a regular basis. (Pl.'s 12M ¶¶ 24–25.) These problems include water running down cell walls, draining into food storage areas, shorting out electrical supplies, and causing the rotting of wood. (Pl.'s 12M ¶ 31.)

Cell house security staff are trained to report any malfunction in the plumbing or heating systems to the maintenance department. (Def.'s 12M ¶ 16.) The maintenance staff regularly responds to repair needs at Stateville. (Def.'s 12M ¶ 157.) The maintenance staff usually respond to reports of needed plumbing repairs within three hours. (Def.'s 12M ¶ 159.) Additionally, Stateville has been continually requesting funds to update the antiquated plumbing system since 1994. (Def.'s 12M ¶ 164.) At the start of 1997, Stateville undertook a major capital improvement project which included the upgrading of the plumbing system. (Def.'s 12M ¶ 165.)

Bolden and Garland also claim that the radium levels in the water supply present a danger to their health. The Stateville water supply contains radium levels in excess of state maximums. (R. at OB0305.) As early as September 1992, the Illinois Environmental Protection Agency ("IEPA") informed Stateville officials that the Stateville water supply contained radium amounts in violation of the Federal and State Maximum Contaminant Level for radium. (R. at OB1313; Pl.'s 12M ¶ 7.)

***2** Radium is a naturally occurring metal which, in relatively high doses, can cause bone sarcoma and cancer. (R. at OB0305; Pl.'s 12M ¶ 10.) The IEPA required Stateville to post a public notice warning of the radium levels in the water. (*Id.*) In response, the IEPA posted a notice informing the Stateville residents of the radium levels in the water and of the health hazards associated with radium. (R. at OB1312; Pl.'s 12M ¶ 14.) After reviewing the notice, the IEPA accepted it as satisfactory. (R. at OB1292.) Stateville also notes that pursuant to state law, the water supply is tested four times a month by a licensed technician. (Def.'s 12M ¶ 169.) The water is also chlorinated to the mandated state level. (Def.'s 12M ¶ 170.)

In addition to the water contamination, Bolden and Garland claim that the poor ventilation, poor bedding, and lack of cleanliness contribute to the hazardous conditions of confinement. Stateville, however, contends that it maintains proper ventilation, bedding and cleanliness. As Stateville pointed out, maintenance staff quickly responds to ventilation problems. (Def.'s 12M ¶ 157.) The American Corrections Association ("ACA") examines

Stateville's ventilation systems to ensure adequacy in accordance with their re-accreditation process. (Def.'s 12M ¶ 166.) Recent findings indicate the ventilation at Stateville is appropriate. (*Id.*)

Stateville also maintains a regular cleaning program which includes the removal of garbage and the sweeping and washing down of cells. (Def.'s 12M ¶ 180.) Under Stateville supervision, inmates clean common areas and cells on a daily basis. (Def.'s 12M ¶ 70.) Stateville also notes that some of the older cells were equipped with beds with steel frames suspended from the wall. (Def.'s 12M ¶ 185.) According to Stateville, all such beds are in the process of being removed and replaced with floor-supported designs. (Def.'s 12M ¶ 187.)

In addition to Bolden's and Garland's joint claim of severe confinement conditions, Garland claims that Stateville officials and employees intentionally denied him necessary medical treatment. Specifically, Garland contends that Dr. George Kurian's refused to remove a benign, but painful, tumor from his right shoulder. Dr. George Kurian is a physician with Corrections Medical Systems and provides medical services at Stateville. (Def.'s 12M ¶ 85.) Dr. Kurian examined Garland on several occasions. (Def.'s 12M ¶ 109.) Garland's medical history includes the removal of a benign fatty tumor (a lipoma) from his right shoulder in 1976. (*Id.*) Dr. Kurian diagnosed a recurring lipoma in 1991, but found the lipoma did not restrict Garland's movement. (Def.'s 12M ¶¶ 113–114, 129 .) Dr. Kurian also educated Garland as to the benign nature of the tumor. (Def.'s 12M ¶ 110.) During his treatment of Garland, Dr. Kurian also referred Garland for physical therapy and prescribed Tylenol. (Def.'s 12M ¶ 139.)

***3** In 1995, Dr. Kenneth Gracz of the surgical clinic examined Garland and recommended surgical removal of the lipoma. (Pl.'s 12M ¶ 34; Def.'s 12M ¶ 141.) Dr. Willard Elyea, the Stateville Medical Director, finding no evidence of functional abnormality, rejected the recommendation. (Def.'s 12M ¶ 142.) In 1996 Dr. Kurian again examined Garland and found the lipoma had diminished. (Def.'s 12M ¶ 143.)

Dr. Kurian testified that he never denied Garland medical treatment. (Def.'s 12M ¶ 147.) However, Garland testified that Kurian admitted that Garland "ought to have the surgery to have [the lipoma] removed so the arm can function." (Pl.'s 12M ¶ 37.) In response to his inquiry as to his well being, Garland claims Dr. Kurian also said, "I'm telling you, you're wasting your time. They're not going to do nothing for you until you drop the lawsuit." (Pl.'s 12M ¶ 38.) Dr. Kurian of course denies ever saying this or threatening in any way to withhold medical treatment. (Def.'s 12M ¶ 149.)

Analysis

Defendants move the court to enter summary judgment on their behalf under Rule 56 of the Federal Rules of Civil Procedure. The court will render summary judgment only if the factual record shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Bratton v. Roadway Package Sys., Inc.,* 77 F.3d 168, 173 (7th Cir.1996) (quoting Fed.R.Civ.P. 56(c)). The court will not render summary judgment if "a reasonable jury could return a verdict for the nonmoving party." *Sullivan v. Cox,* 78 F.3d 322, 325 (7th Cir.1996) (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986)). In ruling on a motion for summary judgment, the court views the facts in the light most favorable to the nonmoving party. *Bratton,* 77 F.3d at 171; *Sullivan,* 78 F.3d at 325. On a motion for summary judgment, the moving party "bears the initial burden of showing that no genuine issue of material fact exists." *Hudson Ins. Co. v. City of Chicago Heights,* 48 F.3d 234, 237 (7th Cir.1995) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986)). Then the burden shifts to the nonmoving party, which "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." Prison conditions are considered cruel and unusual "when they deprive inmates of the minimal civilized measure of life's necessities ..." *French v. Owens,* 777 F.2d 1250, 1252 (7th Cir.1985) (quoting *Rhodes v. Chapman,* 452 U.S. 337, 347 (1981)). Prison officials must provide humane conditions of confinement, including adequate food, shelter, clothing and medical care. *Id.; see also Hudson v. Palmer,* 468 U.S. 517, 526–527 (1984). However, the Constitution does not mandate comfortable prisons. *Id.*

***4** To survive summary judgment on their conditions of confinement claim, plaintiffs must show evidence from which a reasonable jury could find that (1) the conditions of confinement are objectively "sufficiently serious," and (2) the prison officials had "a sufficiently culpable state of mind." *Farmer v. Brennan,* 511 U.S. 825, 834 (1994). If either the objective or subjective requirement is not met, a plaintiff cannot maintain an Eighth Amendment claim. *Lunsford v. Bennett,* 17 F.3d 1574, 1579 (7th Cir.1994).

To meet the first requirement, "the prison official's act or omission must result in the denial of 'the minimal civilized measure of life's necessities." ' *Id.* (quoting *Rhodes,* 452 U.S. at 347). The court determines whether there has been " 'serious deprivation of basic human needs' by examining the 'totality of conditions of confinement." ' *Lunsford,* 17 F.3d at 1579 (quoting *Madyun v. Thompson,* 657 F.2d 868, 874 (7th Cir.1981)). Additionally, the inmates must show that the conditions

of incarceration pose a substantial risk of serious harm. *Id.*

To meet the second requirement, the claimants must show the official's state of mind was one of deliberate indifference to inmate safety and health. *Id.* "A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer,* 511 U.S. at 828. "[D]eliberate indifference describes a state of mind more blameworthy than negligence." *Id.* at 835. It is more than an "ordinary lack of due care for the prisoner's interests or safety." *Id.* (quoting *Whitley v. Albers,* 475 U.S. 312, 319 (1986)). A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement 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 835–36.

Conditions of Confinement

The central claim Bolden and Garland advance concerns the Stateville officials' alleged inaction to improve hazardous confinement conditions despite having knowledge of health risks. Stateville argues that the officials are entitled to summary judgment on this claim. According to Stateville, the undisputed facts establish that they cannot be held liable because they reasonably responded to all of the alleged poor conditions of confinement.

As noted, "deliberate indifference" transcends negligence, as it is more than an ordinary lack of due care. *Id.* at 835. Prison officials are not liable if they respond reasonably to a risk, even if harm ultimately was not averted. *Id.; see also Helling v. McKinney,* 509 U.S. 25, 33 (1993). If the officials know of a danger, but fail to act under such circumstances, it may suggest that the officials actually want the prisoner to suffer the harm. *Jackson v. Duckworth,* 955 F.2d 21, 22 (7 th Cir.1991). The Eighth Amendment protects against future harms to inmates. *Id.* Thus, a prison inmate "could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery." *Helling,* 509 U.S. at 33. "The Government recognizes that there may be situations in which exposure to toxic or similar substances would present a risk of sufficient likelihood ... [that] should therefore be prevented...." *Id.* However, if "the harm is remote rather than immediate, or the officials don't know about it, or can't do anything about it, the subjective component is not established and the suit fails." *Id.*

***5** In the case of the alleged water contamination, the court finds that the Stateville officials are entitled to summary judgment because they did not act with deliberate indifference. Although the Stateville officials knew of the possible contamination risks, the undisputed facts show that they took reasonable actions in response to the water problems. For example, both Bolden and Garland admit that Stateville officials provide regular preventive maintenance to the antiquated plumbing system. (Def.'s 12M ¶ 160.) Even though the plumbing system often causes problems with the water supply, it is undisputed that the Stateville maintenance staff regularly responds to repair needs. (Def.'s 12M ¶ 157.) In fact, the maintenance staff average response time is about three hours. (Def.'s 12M ¶ 159.)

Furthermore Bolden and Garland admit that, at least since 1994, Stateville officials made efforts to gain funding to update the plumbing system. (Def.'s 12M ¶ 164.) In 1996, Stateville undertook a major capital improvement project which included the upgrading of the plumbing system. (Def.'s 12M ¶ 165.) Additionally, when the IEPA discovered excessive radium contamination of the water, the Stateville officials cooperated with the IEPA, and took the required corrective measures. The IEPA deemed Stateville's response satisfactory. (R. at OB1292.) Finally, Stateville adheres to state law water quality requirements. Stateville maintains the appropriate state required chlorination level in the water supply. (Def.'s 12M ¶¶ 169–170.) Stateville also, in accordance with state procedures, continues to have the water supply tested four times a month by a licensed technician. (*Id.*) In view of these undisputed corrective measures, a reasonable jury could not find that defendants acted with reckless indifference towards the water problems at Stateville.

Bolden and Garland argue that by failing to take corrective action to fix the plumbing system before 1996, the Stateville official's acted with deliberate indifference. This argument fails because it ignores many of the Stateville responses to the water contamination issue. As noted, this includes Stateville's measures taken in conformance with IEPA requirements, regular testing and chlorination in accordance with the law, and prior efforts to receive funds for water improvement. Since Stateville was acting to improve water quality since as early as 1994, the court rejects plaintiffs' argument.

Bolden and Garland also argue that the Stateville water conditions parallel the outdated plumbing system in *Jones v. City and County of San Francisco.* 976 F.Supp. 896 (N.D.Cal.1997). In *Jones,* the court found that poor plumbing and sewage systems in a prison violated the Eighth Amendment. *Id.* at 909. The court also found the defendants made no effort to have authorities inspect the water supply system. *Id.* Additionally, a Special Master found the water pipes deteriorating due to asbestos, an absence of vacuum breakers to prevent contamination, and other hazards in the system noted by the City's own Department of Public Health. *Id.* Finally, the court found

that the prison officials had not made enough of an attempt to rectify the situation. *Id.*

***6** The court finds the facts in *Jones* distinguishable from this case. Unlike the defendant in *Jones,* Stateville continually has the water supply inspected four times a month in accordance with state law. Also unlike *Jones,* the Department of Public Health did not cite Stateville for having a hazardous and dangerous plumbing system. Furthermore, the court in *Jones* does not note any action by the defendant in response to that finding. However, as noted, upon learning of the high radium levels from the IEPA, Stateville took appropriate action to protect the inmate population. Finally, unlike the court's findings in *Jones,* this court finds that Stateville did make reasonable attempts to remedy the water supply situation. Even if Stateville's efforts to provide uncontaminated water reveal a lack of ordinary care, they are at the worst merely negligent.

As for the alleged poor ventilation, inappropriate bedding, and uncleanliness, the court again finds that Stateville officials did not act with deliberate indifference.[1] Bolden and Garland admit that Stateville ventilation systems and air quality are routinely inspected by the ACA. They also admit that Stateville is currently in compliance with ACA ventilation and air quality standards. Furthermore, it is undisputed that the Stateville maintenance staff quickly respond to complaints concerning these systems. Bolden and Garland also admit that Stateville maintains a regular cleaning schedule. Stateville regularly supervises the washing down of cells and common areas along with the removal of garbage. Finally, Stateville is in the process of replacing the last of the wall-supported beds with presumably better floor-supported models. Bolden admits that upon learning of his complaint concerning his bedding, Stateville officials offered to move him to another cell with different accommodations.

"The Constitution does not require prison officials to provide the equivalent of hotel accommodations, or even comfortable prisons." *Lunsford,* 17 F.3d at 1581. The court finds that Stateville's actions to ensure adequate ventilation and cleanliness along with their endeavor to improve cell-house bedding, are evidence that Stateville, at the very least, attempted to maintain proper conditions of confinement. Thus, Stateville did not act with deliberate indifference.

For the above reasons, this court finds that Stateville took reasonable measures to eliminate contaminants and ensure water quality, and maintain adequate ventilation, bedding and cleanliness. A reasonable juror could not find that Stateville acted with deliberate indifference. Accordingly, the court grants summary judgment for defendants as to these issues.

Medical Care

Garland claims that, in violation of the Eighth Amendment, Dr. Kurian refused him necessary surgery in retaliation for his participation in this lawsuit. Dr. Kurian along with Stateville officials deny the allegation and claim the surgery was not necessary. For the following reasons, the court finds that a genuine issue of a material fact exists from which a trier of fact could determine that Dr. Kurian deliberately denied Garland medical treatment for a serious medical risk.

***7** The government is obligated to provide medical care to inmates because the inmates rely on authorities to treat their medical needs. *See Estelle v. Gamble,* 429 U.S. 97, 103 (1976); *see also French,* 777 F.2d at 1254. "To state a [Eighth Amendment] claim for the deprivation of medical care, a prisoner must allege "deliberate indifference to serious medical needs." *Estelle,* 429 U.S. at 104; *see also Wellman,* 715 F.2d at 271. This requires the claimant to show: (1) the physician's knowledge of a serious medical risk, and (2) the physician's deliberate indifference to that risk. *Steele v. Choi,* 82 F.3d 175, 179 (7th Cir.1996). In determining the seriousness of the medical need the court considers "the severity of the medical problem, the potential for harm if medical care is denied or delayed and whether any such harm actually resulted from the lack of medical attention." *Burns v. Head Jailor of LaSalle County Jail,* 576 F. Supp 618, 620 (N.D.III.1984) (citing *Thomas v. Pate,* 493 F.2d 151, 158 (7th Cir.1974)).

A claimant may establish deliberate indifference using either direct evidence or evidence from which it may be inferred. *See Farmer,* 511 U.S. at 846. An inference of deliberate indifference may arise when the physician's decision was "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." *Estate of Max G. Cole v. Fromm,* 94 F.3d 254, 262 (7th Cir.1996). An inadvertent failure to provide adequate medical care, however, does not constitute cruel and unusual punishment under the Eighth Amendment. *Estelle,* 429 U.S. at 105–106. A prisoner claiming inadequate medical care cannot survive summary judgment when the allegation is merely based on medical malpractice. *Fromm,* 94 F.3d at 259. "Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Id.; see Steele v. Choi,* 82 F.3d 175, 180 (7th Cir.1996).

Applying the first component of the test, the court notes that the parties do not dispute that Dr. Kurian knew of the recurring lipoma in Garland's right shoulder. Rather, the issue concerns the medical seriousness of the lipoma. In Garland's case, the court finds that for the purposes of summary judgment, the record contains sufficient evidence that the lipoma was a serious medical condition.

As Garland emphasizes, two independent medical specialists examined Garland and opined that the lipoma needed to be removed. Prior to the filing of this action, an independent specialist examined Garland and found the lipoma limited Garland's range of movement. The specialist recommended to the Stateville medical staff that the lipoma be surgically removed. Stateville approved the recommendation, but did not schedule surgery. The second independent specialist examined Garland after the filing of the action. That specialist also recommended the removal of the lipoma. Stateville denied this recommendation, and again did not schedule the surgery.

***8** Additionally, Garland testified that, as a result of the lipoma, he suffers severe pain and has limited use of his right arm. (Pl.'s 12M ¶ 39.) Garland also testified that Dr. Kurian admitted to him that he ought to have the lipoma removed "so that the arm can function." (Garland Dep. at 9, 13.) When taken together and read in a light most favorable to the non-moving party, this evidence shows that Garland's lipoma was severe enough for a reasonable juror to find the lipoma constitutes a serious medical condition.

Applying the test's second component, the court finds that under the summary judgment standard, a reasonable juror could find that Dr. Kurian acted with deliberate indifference. The evidence that two independent specialists recommended the surgery, coupled with Garland's testimony that Dr. Kurian admitted the surgery was necessary, may give rise to an inference that Dr. Kurian acted with deliberate indifference. Additionally, Garland testified that Dr. Kurian told him he would not provide him medical help unless he dropped this lawsuit against Stateville administrators. (Garland Dep. at 13; Pl.'s 12M ¶ 38.) Garland further testified that upon telling Dr. Kurian that he had a responsibility to see to his medical needs, Dr. Kurian again told Garland that Stateville would provide no medical assistance until Garland dropped the suit. (Garland Dep. at 10, 12–13; Pl.'s 12M ¶ 38.) Based on the evidence, a juror could find that Garland's symptoms clearly required a particular medical treatment which Dr. Kurian deliberately chose not to provide.

Stateville argues that Garland's statements about his medical conditions and suffering are not relevant because he is not trained in medicine. Therefore, Stateville argues, Garland's disagreement with medical staff does not give rise to an Eighth Amendment violation. The court rejects this argument because it ignores evidence that two independent medical specialists believe that Garland's lipoma is serious enough to warrant surgery. It also ignores the fact that Stateville officials at one time deemed the surgery necessary and even approved the surgery at that time. Finally, even though Garland is not trained in medicine, his testimony concerning the pain and other effects of his lipoma are highly relevant to determining the severity of the benign tumor.

The court finds that the evidence in the case, when viewed in the light most favorable to Garland, raises a question of fact as to whether Dr. Kurian deliberately refused to treat a serious medical condition. Accordingly, the court denies defendants' motion for summary judgment as to Garland's claim that he was intentionally denied medical treatment.

Qualified Immunity

Stateville argues that the qualified immunity doctrine shields its employees and administrators from liability. Under the qualified immunity doctrine, government officials performing discretionary functions are protected from liability if their actions do not violate established statutory or constitutional rights of which a reasonable person would have known. *Anderson v. Creighton,* 479 U .S. 635, 638 (1987); *Walsh v. Mellas,* 837 F.2d 789, 801 (7 th Cir.1988). As Stateville noted, the Seventh Circuit employs a two-part test to determine when qualified immunity is appropriate: (1) the alleged conduct must violate the constitution, and (2) the constitutional standards must be clearly established at the time of the violation. *Burns v. Reed,* 44 F.3d 524, 526–527 (7 th Cir.1995).

***9** Applying this test to Garland's claim of medical deprivation, the court finds that qualified immunity does not protect Dr. Kurian from liability. As to the first part of the qualified immunity test, the court has already found a genuine issue of material fact over whether Garland was intentionally denied medical treatment in violation of the Eighth Amendment. Therefore, summary judgment is inappropriate. As for the second part of the qualified immunity test, defendants do not dispute that clear constitutional standards of medical treatment for prisoners existed during the relevant time period. Thus, qualified immunity does not shield Dr. Kurian from liability.

Conclusion

For the reasons set forth above, the court grants in part and denies in part defendants' motion for summary judgment [doc. 121–1]. The court grants defendants' motion for summary judgment as to plaintiffs' conditions of confinement claim, but denies summary judgment as to Garland's claim that he was deprived of medical care. The parties should discuss settlement of the remaining claim before the next court date.

Footnotes

1 The court finds that plaintiffs have abandoned these claims. Plaintiffs' opposition to defendants' motion for summary judgment makes no mention of poor ventilation, inappropriate bedding, or uncleanliness, but simply focuses on the alleged water problems.