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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

JOSE VAZQUEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	14-2300
	)	
ANGIE WILSON, *et al.*	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

COLIN S. BRUCE, U.S. District Judge:

Plaintiff, proceeding pro se and presently incarcerated at Jerome Combs Detention Center, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to a serious medical need. The matter comes before this Court for ruling on the Defendants' Motions for Summary Judgment. (Doc. 33). The motion is granted.

LEGAL STANDARD

Summary judgment should be granted "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). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). The party moving for summary judgment must show the lack of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to be a "genuine" issue, there must be more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Only disputes over facts that

might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FACTS

At all times relevant, Plaintiff was incarcerated at Jerome Combs Detention Center ("Jail" or "JCDC") as a federal pretrial detainee. Both defendants worked at the jail: Defendant Wilson was a nurse; Defendant Schloendorf was a correctional sergeant.

On November 4, 2014, Plaintiff complained of tooth pain. Jail officials scheduled Plaintiff for a dental appointment on November 12, 2014. Between Plaintiff's initial complaints of pain and the scheduled dentist appointment, Plaintiff did not submit any additional medical requests.

On November 12, 2014, the dentist removed one of Plaintiff's wisdom teeth. Plaintiff experienced swelling in his jaw, difficulty chewing, and an alleged infection. The dentist also prescribed Motrin for pain and antibiotics. Plaintiff received 15 pills (200 milligram each) of Motrin immediately and was instructed to take three (3) pills every six (6) hours, as needed. The antibiotics were ordered from an outside pharmacy that day.

By the next morning, Plaintiff was out of Motrin; he had consumed all 15 pills over the course of the night. Plaintiff requested more pain medication and the antibiotics from Defendant Wilson during the morning medication line. Defendant Wilson told Plaintiff she did not have his medication at that time. During the afternoon medication line, Defendant Wilson told Plaintiff that the antibiotics had been ordered. Plaintiff testified that this incident formed the sole basis of his claims against Defendant Wilson. Pl.'s Dep. 130:3-17.

Plaintiff received the antibiotics on November 14, 2014, approximately 56 hours after his surgery. Plaintiff does not allege that this medication unduly withheld once received by JCDC

officials. Plaintiff testified that he took the medication as prescribed. Plaintiff also received more Motrin: 15 pills on November 15, 2014; and, 15 pills on November 18, 2014. Plaintiff testified that by November 20, 2014, the swelling in his tooth and the alleged infection had improved. Pl.'s Dep. 112:13-22.

Plaintiff asked Defendant Schloendorf on November 17, 2014, if Defendant Schloendorf could take him to an outside hospital to treat his pain. Defendant Schloendorf denied Plaintiff's request, told Plaintiff that only medical staff could authorize such a request, and that Plaintiff should fill out a medical request form. Plaintiff's claims against Defendant Schloendorf are based entirely on this incident. Pl.'s Dep. 130:18-131:8.

ANALYSIS

Inmates are entitled to adequate medical care under the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). Because Plaintiff was a pretrial detainee his rights are derived from the Due Process Clause of the Fourteenth Amendment rather than the Eighth Amendment's proscription against cruel and unusual punishment. *Burton v. Downey*, 805 F.3d 776, 784 (7th Cir. 2015) (citing *Pittman v. Cnty. of Madison*, 746 F.3d 766, 775 (7th Cir. 2014)). The standards under the respective amendments are essentially the same. *Id.* (citing *Smego v. Mitchell*, 723 F.3d 752, 756 (7th Cir. 2013)).

To prevail, a plaintiff must show that the prison official acted with deliberate indifference to a serious medical need. *Estelle*, 429 U.S. at 105. Claims of negligence, medical malpractice, or disagreement with a prescribed course of treatment are not sufficient. *McDonald v. Hardy*, 821 F.3d 882, 888 (7th Cir. 2016) (citing *Pyles v. Fahim*, 771 F.3d 403, 408 (7th Cir. 2014), and *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)). Rather, liability attaches when "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 v. Brennan*, 511 U.S. 825, 837 (1994). The parties do not dispute that Plaintiff suffered from an objectively serious medical need.

Plaintiff seeks to impose constitutional liability based upon a 56-hour delay in receiving prescribed antibiotics and for a non-medical jail official's denial of Plaintiff's requests to be taken to the emergency room for treatment. A delay in receiving effective medical treatment can support an inference of deliberate indifference. *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011) ("Delay in treating a condition that is painful even if not life-threatening may well constitute deliberate indifference…." (citations omitted)); *Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) ("A significant delay in effective medical treatment also may support a claim of deliberate indifference, especially where the result is prolonged and unnecessary pain." (citation omitted)).

The Seventh Circuit recently held in *Burton* that a two-day delay in receiving prescription medication is not sufficient to sustain a constitutional claim absent evidence that jail officials deliberately or even recklessly caused the delay. *Burton*, 805 F.3d at 785. Here, Plaintiff asserts that Defendant Wilson was deliberately indifferent because she did not have the antibiotics the morning after Plaintiff's surgery "and she said she wasn't going to do anything about it." Pl.'s Dep. 60:7-11. But Plaintiff later testified that Defendant Wilson told him later that same day that the antibiotics had been ordered. *Id.* 130:11-14 ("Q. And then later on that evening, the same day, November 13th of 2014, [Defendant Wilson] told you the antibiotics had been ordered? A. Correct."). The only reasonable inference from this testimony is that Defendant Wilson inquired about the status of Plaintiff's antibiotics at some point after Plaintiff's request in the morning, but

before she saw Plaintiff later that day. Furthermore, Plaintiff does not allege, nor is there evidence in the record to support the conclusion, that Defendant Wilson was responsible for any delay in receiving antibiotics, or that she obstructed the process in any way. Therefore, the Court finds that no reasonable juror could conclude that Defendant Wilson was deliberately indifferent to Plaintiff's serious medical need.

Plaintiff next asserts that Defendant Schloendorf was deliberately indifferent because he denied Plaintiff's requests to be taken to a hospital. Defendant Schloendorf was not a member of the JCDC medical staff; he was a guard. Thus, evidence showing that Defendant Schloendorf "ignored or interfered with a course of treatment prescribed by a physician" could support a finding of deliberate indifference. *McDonald*, 821 F.3d at 888 (citing *Estelle*, 429 U.S. at 104-105).

By the time Plaintiff encountered Defendant Schloendorf, Plaintiff had already received the prescribed antibiotics and pain medication. Plaintiff testified that he showed Defendant Schloendorf his swollen jaw, but Plaintiff does not otherwise describe any objective conditions that would suggest Plaintiff faced a life threatening situation and that a trip to the emergency room was therefore necessary. Moreover, Defendant Schloendorf did not just deny Plaintiff's request without providing help; he explained the process Plaintiff needed to follow and to whom Plaintiff needed to direct his requests. According to exhibits filed by the Defendants, Plaintiff was able to submit a medical request form and grievance to medical staff on the day of his encounter with Defendant Schloendorf. *See* (Doc. 32-2 at 23-24). From this record, no reasonable juror could conclude that Defendant Schloendorf was deliberately indifferent to Plaintiff's medical needs.

IT IS THEREFORE ORDERED:

1) **Defendants' Motion for Summary Judgment [33] is GRANTED. The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions not addressed below are denied as moot, and this case is terminated, with the parties to bear their own costs. Plaintiff remains responsible for the $350.00 filing fee.**

2) **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 MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.**

Entered this 11th day of August, 2016.

s/Colin S. Bruce
COLIN S. BRUCE
UNITED STATES DISTRICT JUDGE