

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

KARLID LASH,)	
)	
Plaintiff,)	
)	
v.)	No.: 16-2138-SEM-TSH
)	
TIMOTHY E. BUKOWSKI, et al.,)	
)	
Defendants.)	

ORDER

SUE E. MYERSCOUGH, U.S. District Judge:

This cause is before the Court on Defendants’ motion for summary judgment. Plaintiff Karlid Lash has failed to identify a genuine issue of material fact that would preclude summary judgment in Defendants’ favor. Defendants have demonstrated that they are entitled to judgment as a matter of law on Lash’s deliberate indifference claims against them. Therefore, Defendants’ motion for summary judgment is granted.

Federal Rule of Civil Procedure 56(a) provides that summary judgment shall 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); *Ruiz-Rivera v.*

Moyer, 70 F.3d 498, 500-01 (7th Cir. 1995). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials of the pleadings, which demonstrates that there is a genuine issue for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). “[A] party moving for summary judgment can prevail just by showing that the other party has no evidence on an issue on which that party has the burden of proof.” *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1183 (7th Cir. 1993). “As with any summary judgment motion, we review cross-motions for summary judgment construing all facts, and drawing all reasonable inferences from those facts, in favor of the nonmoving party.” *Laskin v. Siegel*, 728 F.3d 7314, 734 (7th Cir. 2013)(internal quotation marks omitted).

Accordingly, the non-movant cannot rest on the pleadings alone, but must designate specific facts in affidavits, depositions, answers to interrogatories or admissions that establish that there is a genuine triable issue; he must do more than simply show that

there is some metaphysical doubt as to the material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 261 (Brennan, J., dissenting) (1986)(quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)); *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 818 (7th Cir. 1999). Finally, a scintilla of evidence in support of the non-movant’s position is not sufficient to oppose successfully a summary judgment motion; “there must be evidence on which the jury could reasonably find for the [non-movant].” *Anderson*, 477 U.S. at 252.

Lash filed this case under 42 U.S.C. § 1983 alleging that Defendants acted with deliberate indifference towards his serious medical needs in violation of his Eighth Amendment rights when he was a detainee at the Jerome Combs Detention Center (“Jerome Combs”). Specifically, Lash claimed that Defendants were deliberately indifferent towards his serious medical needs because they denied him a diabetic diet and because they denied him diabetic and other prescription medication. “In order to prevail on a deliberate indifference claim, a plaintiff must show (1) that his condition was ‘objectively, sufficiently serious’ and (2) that the ‘prison officials acted with a sufficiently culpable state of mind.” *Lee*

v. Young, 533 F.3d 505, 509 (7th Cir. 2008)(quoting *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005)); *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)(same).

Lash has offered no evidence with which to create a genuine issue of material fact that Defendants violated his Constitutional rights. The Court sent a notice to Lash regarding Defendants' motion for summary judgment informing him of the consequences for failing to respond to the motion. In addition, the Court granted Lash's motions and gave him additional time within which to respond to Defendants' motion for summary judgment.

Nevertheless, Lash failed to respond. Local Rule 7.1(D)(2)(b)(6) provides that "[a] failure to respond to any numbered fact [contained within a motion for summary judgment] will be deemed an admission of the fact." *Id.* Therefore, Lash has admitted all of the relevant facts that show that Defendants are entitled to summary judgment. *Parra v. Neal*, 614 F.3d 635, 636 (7th Cir. 2010), *as revised* (July 19, 2010)(internal citations omitted)("At summary judgment, the plaintiffs filed an opposition to the defendants' motion but did not bother to respond to their statement

of material facts. The district court thus accepted the defendants' statement of material facts as true. We do as well.”).

Despite Lash's failure to respond, the Court is cognizant that “[s]ummary judgment cannot be granted by default even if there is a complete failure to respond to the motion.” *Boyd v. Habeck*, 2013 WL 518966, * 1 (E.D. Wis. Feb. 12, 2013)(citing Fed. R. Civ. Pro. 56(e) advisory committee note to 2010 amendments). Accordingly, the Court has reviewed the evidence submitted by Defendants, including Lash's deposition testimony, in order to determine whether a genuine issue of material fact exists that would preclude summary judgment in their favor. The Court finds that no such disputed fact exists and that Defendants are entitled to judgment as a matter of law. *Abbot v. Gale*, 896 F.2d 323, 326 (8th Cir. 1990) (holding that where a defendant denies the allegations of the complaint and a plaintiff then fails “to respond with evidence in support of [her] claim,” the court is justified in granting summary judgment).

The undisputed evidence shows that Lash received his medication while he was a detainee at Jerome Combs. At the time of his detention, Lash was an obese, fifty-four year old with Type-2

Diabetes, hypertension, and acid reflux. Defendant Physician's Assistant Brent Huffines ordered Lash's prescription medications—Metformin, Ferrous Sulphate, Simvastatin, and Claritin—the day after Lash arrived at Jerome Combs. Lash received his Metformin and Ferrous Sulphate that same day, and Lash received Simvastatin and Claritin three days later. Notably, Lash admitted during his deposition that he received his medications every day while he was at Jerome Combs.

In addition, Lash received a chronic care appointment two weeks after he arrived at Jerome Combs. During this appointment, Lash received a full medical examination, and Lash discussed with Defendant Huffines the management of his diabetes through diet, medication, and exercise. The medical evidence establishes that Lash also received medical care and treatment for his sinus infections and acid reflux in addition to the care and treatment that he received for his diabetes.

This undisputed evidence proves that Defendants were not deliberately indifferent towards Lash's serious medical needs. On the contrary, the evidence presented by Defendants verifies that Lash received his diabetic medication on a daily basis. Lash

testified during his deposition that he received his medications every day while at Jerome Combs. Lash also acknowledged during his deposition that he received each of his prescription medications, except for his acid reflux medication, as of November 17, 2014. Lash received Nexium for his acid reflux on November 24, 2014.

The undisputed evidence demonstrates that Lash received medical care and treatment for all of his known medical ailments while he was a detainee at Jerome Combs. Accordingly, Defendants are entitled to summary judgment on Lash's claim that they were deliberately indifferent towards his serious medical needs because, contrary to the allegations in his Complaint, Lash received his diabetic medication and other medications as needed while at Jerome Combs.

Defendants are also entitled to summary judgment on Lash's claim that they were deliberately indifferent based upon their failure or refusal to provide him with a diabetic diet. Again, the undisputed evidence shows that Lash did, in fact, receive a diabetic diet while he was detained at Jerome Combs.

During his deposition, Lash conceded that his claim had more to do with portion size than being denied a diabetic diet. Lash also

conceded that, while at Jerome Combs, he regularly ordered food from the commissary that was inconsistent with his diet such as Ramen noodles, junk food, and candy.

Regardless, the undisputed evidence shows that Lash received a diabetic diet while he was at Jerome Combs and also shows that Lash's meals were nutritionally adequate. Therefore, Defendants are entitled to summary judgment on Lash's claim that Defendants were deliberately indifferent to his serious medical needs based upon the food that he received at Jerome Combs.

IT IS, THEREFORE, ORDERED:

1. Defendants' motion for summary judgment [34] is GRANTED. The Clerk of the Court is directed to enter judgment in Defendants' favor and against Plaintiff. All other pending motions are denied as moot, and this case is terminated, with the Parties to bear their own costs. All deadlines and settings on the Court's calendar are vacated.

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).

3. If Plaintiff wishes to proceed in forma pauperis on appeal, his motion for leave to appeal in forma pauperis must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. Fed. R. App. P. 24(a)(1)(c); *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 responsible 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 chooses to appeal, he will be liable for the \$505.00 appellate filing fee regardless of the outcome of the appeal.

ENTERED this 26th day of October, 2017

s/ Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE