

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

DAVID CARTER,

Plaintiff,

v.

14-CV-2089

TIMOTHY BUKOWSKI,
MICHAEL DOWNEY,
HEATHER PASEL,
DAWN O'DELL, and
KELLY LOVE,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

The plaintiff pursues a claim for deliberate indifference to his serious medical needs during April of 2014 at the Jerome Combs Detention Center. On January 4, 2016, the court granted summary judgment to Sheriff Bukowski, Chief Downey, and Sergeant Love. The court assumes familiarity with that order, which recounts the facts in detail. Distilled to the essential, the plaintiff claims that he began complaining on April 4, 2014 of severe stomach pains and occasional blood from his rectum but was not scheduled to see a doctor. On April 10, 2014, the plaintiff awoke in the early morning to discover that he had defecated on himself. He fainted as he tried to make it to the bathroom. He was taken to the hospital that night and diagnosed with diverticulosis,¹ “minimal traction bronchiectasis”² and a chin laceration.

Remaining as defendants are nurses O'Dell and Pasel, for whom the court denied summary judgment in the first round, explaining:

¹Diverticulosis “occurs when small bulging pouches (diverticula) develop in your digestive tract. When one or more these pouches become inflamed or infected, the condition is called diverticulitis.” (www.mayoclinic.org) (last visited 12/28/15). “Diverticulitis can cause severe abdominal pain, fever, nausea and a marked change in your bowel habits. Mild diverticulitis can be treated with rest, changes in your diet and antibiotics.” *Id.* The hospital records do not show a diagnosis of diverticulitis.

²According to the National Heart, Lung, and Blood Institute, “bronchiectasis is a condition in which damage to the airways causes them to widen and become flabby and scarred. The airways are tubes that carry air in and out of your lungs.” www.nhlbi.nih.gov (Last visited 12/28/15.)

The deliberate indifference question is harder as to Nurses Pasel and O'Dell, primarily because the nurses do not explain the reasons for their actions or inaction. According to the plaintiff, he told Nurse O'Dell on April 7 and April 8 that he felt he needed emergent medical attention because he was having severe stomach pains and had noticed occasional bleeding from his rectum. Nurse O'Dell told the plaintiff to follow the usual procedure and file a sick call request. However, Nurse O'Dell offers no affidavit explaining the basis for her apparent conclusion that the plaintiff was not in need of urgent medical attention. Nurse O'Dell might have concluded that no emergency existed because she could not correlate the plaintiff's self-described symptoms with objective findings, but that is a guess on this record. Without an affidavit from Nurse O'Dell there is nothing in the record to suggest that O'Dell exercised any professional judgment at all.

Similarly, Nurse Pasel is silent about who first reviewed the plaintiff's April 8th sick call request and when. If the request was reviewed on April 9, what action was taken, if any, and why or why not? On this record, a juror could conclude that the plaintiff's April 8 request was simply ignored, even though he was arguably describing a medical condition that needed evaluation. The comment/response line of the April 8 request states only that the plaintiff was sent to the emergency room on April 10. Perhaps the plaintiff request was not answered on April 9 because other requests needed attention more urgently, but Nurse Pasel does not say this.

The defendants have the burden of proof at this stage, and they have not met that burden for Nurses Pasel and O'Dell. Without an explanation from the nurses for their actions or inaction, a jury could rationally find that the nurses knew about and deliberately ignored the plaintiff's requests for medical attention despite his description of serious abdominal pain lasting at least several days, with occasional blood from his rectum.

(1/4/16 Order.)

Before the court is the nurses' supplemental motion for summary judgment. Nurse O'Dell avers that if she had believed, in her professional judgment, that an inmate needed urgent medical attention, she would have sent the inmate to the emergency room or consulted the physician assistant. (O'Dell 2d Aff. Para. 6.) She avers that she does

not recall Carter being in any obvious distress or appearing to need immediate treatment. Had he been in obvious distress or appeared to be in need of immediate medical care, I would have sent him to the emergency room that evening. In the absence of any observable distress or serious medical need, I instructed him to complete a sick call slip and place it in the box so his complaints

could be evaluated in the morning by medical staff.

(O'Dell 2d Aff. Para. 10.)

The plaintiff contends that he was obviously experiencing a medical emergency based on his description to O'Dell of his severe stomach pains and noticing blood from his rectum on his towel after showering. However, he has no evidence to counter O'Dell's professional judgment that Plaintiff's medical complaints were not so urgent that he needed to be sent to the emergency room or to see a doctor sooner than the standard sick call procedure allowed. The plaintiff did not submit a sick call slip during the day on April 8 when the medical department was staffed (Gill Aff. Para. 4), instead waiting to bring his problem to Nurse O'Dell during the evening med line, even though O'Dell had told him a day earlier to submit a request per the standard procedure. As the court noted in its prior order, the video recording during this time, though at times difficult to discern, does not show the plaintiff in any apparent distress. The plaintiff testified in his deposition that he was able to go to his laundry job on April 8 after he spoke to Nurse O'Dell and that his pain fluctuated, even on April 9, after he had submitted the sick call request. (Pl.'s Dep. Pp. 58, 68.) The plaintiff's April 8 sick call request slip did not seem to suggest an emergency—complaining of “bad pains” in his stomach for two weeks and “a few times in the last few weeks I've been having blood on my towel when I get out of the shower.” (d/e 47, p. 85.) The plaintiff offers no evidence from which a jury could find that scheduling the plaintiff for a doctor appointment on April 10, which is what would have been done if the plaintiff had not been taken to the hospital in the early morning hours of April 10, was a substantial departure from accepted medical judgment. Even hindsight does not support the plaintiff's claim that he was experiencing an emergency. As the court stated in its prior order, “The battery of tests run at the hospital did not uncover any urgent medical need—the plaintiff simply fainted.” (d/e 66, p.7.)

In short, a juror could not find that Nurse O'Dell personally knew about and consciously disregarded a serious medical need of the plaintiff. As to Nurse Gill (formerly Pasel), she had no interaction with the plaintiff at all. She would have been responsible for scheduling the plaintiff's appointment on April 10 after receiving his sick call slip on April 9. Whether she actually scheduled the appointment is not in the record because the appointment would have been cancelled in light of the plaintiff's transport to the hospital early that morning. No evidence would support a jury verdict against Nurse Gill.

IT IS ORDERED:

(1) The plaintiff's motion to reconsider the appointment of counsel is denied for the reasons stated in the court's 6/27/14 order. Plaintiff's pleadings in this case have continued to demonstrate that he is able to proceed pro se in light of the straightforward nature of his claim. He was able to obtain relevant medical records and also had personal knowledge of what he experienced and the responses he received to his requests for help. Plaintiff asserts that he was unable to cite to specific documents in the record because did not have his legal

materials (d/e 76, p. 1), but the court has excused the plaintiff's compliance with local rule 7.1(D)(2). The record is well developed, and the court has considered all the evidence in the record.

(2) The supplemental motion for summary judgment by Dawn O'Dell and Heather Pasel is granted (70).

(3) The clerk is directed to enter judgment in favor of the defendants and against the plaintiff and to close this case.

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

Entered: July 11, 2016.

s/Harold A. Baker

HAROLD A. BAKER

UNITED STATES DISTRICT JUDGE