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Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

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| LUIS BELLO, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | 16-CV-2153 |
| | ) | |
| BRANT KIMERY AND | ) | |
| NURSE ANGIE KEMPS,[1] | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER**

**ERIC I. LONG, U.S. MAGISTRATE JUDGE.**

Plaintiff filed this case pro se from his detention in the Jerome Combs Detention Center alleging deliberate indifference to his seizure disorder. In particular, Plaintiff alleged that Correctional Officer Kimery failed to obtain medical care for Plaintiff when Plaintiff had a seizure on February 19, 2016, and that Nurse Kimps refused to acknowledge Plaintiff's seizure disorder. (6/6/16 Merit Review Order.)

Defendants filed a motion for summary judgment on January 30, 2017. Plaintiff has not responded or requested more time to do

[1] The proper spelling of Defendant "Kemps" appear to be "Kimps" from the affidavit submitted by that Defendant. (d/e 23-2, pp. 1-4.) Additionally, the spelling of Defendant Kimery's first name appears to be "Brent." The Court uses the spelling Kimps throughout the order.

so, despite being warned that Defendants' statement of facts would be accepted as true unless Plaintiff responded with admissible evidence to contradict those facts. (Rule 56 Notice, d/e 24). Additionally, local rule 7.1(D)(2) provides that a failure to respond to a summary judgment motion is deemed an admission of the motion. CDIL-LR 7.1(D)(2).

Defendants' undisputed facts demonstrate that no reasonable juror could find for Plaintiff on his claims. Swearingen-El v. Cook County Sheriff's Dept., 602 F.3d 852, 859 (7th Cir. 2010)(dispute for trial exists only if evidence would allow jury to return verdict for nonmovant). Liability attaches to Defendants only if they were deliberately indifferent to Plaintiff's serious medical need. Deliberate indifference is more than negligence or malpractice. Deliberate indifference is the conscious disregard of a substantial risk of serious harm. Petties v. Carter, 836 F.3d 722, 728 (7th Cir. 2016)(discussing different methods of proving deliberate indifference); Thomas v. Cook County Sheriff's Dept., 604 F.3d 293, 301 n.2 (7th Cir. 2010)("we apply the same legal standard to a claim

alleging deliberate indifference to an inmate's medical needs, whether filed under the Eighth or Fourteenth Amendment.").[2]

Plaintiff does have a history of seizures, which allows an inference of a serious medical need, but no evidence allows an inference of deliberate indifference by Defendants. When Plaintiff arrived at the jail in July 2015, he informed jail staff that he was no longer taking anti-seizure medicine, did not wish to take the medicine, and had not had a seizure for three years. (Defs.' Undisp. Facts 25-28.) Plaintiff was placed on "chronic care" status, which meant that he had an appointment with medical staff every three months. (Defs.' Undisp. Fact 30.) The named Defendants were not involved in this decision, but, in any event, nothing in the record allows an inference that this course of action amounted to deliberate indifference—a substantial departure from accepted professional judgment. *See* Petties, 836 F.3d at 729 ("a medical professional's treatment decision must be 'such a substantial departure from accepted professional judgment, practice, or

[2] Whether deliberate indifference is still the applicable subjective standard on a detainee's claim may be debatable in light of the Supreme Court case Kingsley v. Hendrickson, 135 S.Ct. 2466 (2015), but the Seventh Circuit has not decided the question and appears to continue to apply the deliberate indifference standard to pretrial detainee medical claims. *See* Collins v. Al-Shami, 851 F.3d 727, 731 (7th Cir. 2017); Phillips v. Sheriff of Cook County, 828 F.3d 541 n. 31 (7th Cir. 2016). The debate is immaterial in this case, though, because the record would not support a verdict for Plaintiff even under a more objective standard of liability.

standards as to demonstrate that the person responsible did not base the decision on such a judgment.'")(quoted cite omitted).

In the early morning hours of February 20, 2016, Plaintiff's cellmate alerted Defendant Kimery, an officer without medical training, that Plaintiff was having a seizure. Plaintiff had been sleeping on the top bunk even though he had a low bunk permit. Officer Kimery observed Plaintiff on the ground, unconscious, and called the shift commander and the on-duty first responder for direction. The first-responder, who had medical training, instructed Officer Kimery to monitor Plaintiff, make sure Plaintiff could not harm himself, and report back if Plaintiff's condition worsened, which is the standard course of treatment according to Defendants. Officer Kimery followed the first-responder's instructions, and, about 15 minutes later, Plaintiff was back in the top bunk, refusing medical attention, and indicating to Officer Kimery that he was okay. Plaintiff did not appear to Officer Kimery to be injured. (Defs.' Undisp. Facts 36-50.)

When Nurse Kimps arrived to work later that morning on February 20, she was informed of Plaintiff's seizure and went to check on him. Nurse Kimps asked Plaintiff if he wanted to take

anti-seizure medication; Plaintiff responded that he no longer took anti-seizure medication. (Defs.' Undisp. Facts 57-60.)

On February 26, 2016, Plaintiff saw Physician Assistant Huffines. Plaintiff told Physician Assistant Huffines that he was feeling all right and not having complications from his epilepsy. (Defs.' Undisp. Fact 69.) Plaintiff did not suffer another seizure after February 20, 2016. (Defs.' Undisp. Fact 72.)

Nothing from these facts suggests that Defendants Kimery or Kimps consciously disregarded a substantial risk to Plaintiff from Plaintiff's seizure or his seizure disorder. Defendant Kimery, who had no medical training, contacted the first responder and followed the first responder's instructions. Plaintiff stated in his deposition that he would not have declined medical attention but he also stated that he had no recollection of the incident, including what Officer Kimery did or did not do. (Pl.'s Dep. p. 93.) Plaintiff offers no affidavit from his cellmate, who purportedly observed the incident. Further, nothing in the record suggests that Defendant Kimery should have taken any other action, much less that Kimery was subjectively aware that other action should be taken. Plaintiff stated in his deposition that he should have been sent to the

hospital, but he offers no admissible evidence to support that speculation. (Pl.'s Dep. p. 13.)

Similarly, Nurse Kimps offered anti-seizure medicine to Plaintiff the next day, but Plaintiff refused, and Plaintiff did not have a seizure after February 20, 2016. Plaintiff asserted in his deposition that Nurse Kimps should have taken Plaintiff to the doctor for alleged head injuries from the seizure, but Plaintiff does not dispute that Nurse Kimps did not observe any injuries, and that Plaintiff told her he was okay. (Defs.' Undisp. Fact 58; Kimps Aff. para. 15.)

In short, Defendants' uncontested facts are supported by their cites to the record and demonstrate that they were not deliberately indifferent to Plaintiff's serious medical needs. Accordingly, summary judgment must be granted to Defendants.

**IT IS THEREFORE ORDERED:**

1. Defendants' motion for summary judgment is granted (d/e 23). The clerk is directed to enter judgment in favor of Defendants and against Plaintiff. This case is terminated, with the parties to bear their own costs.

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 should identify the issues Plaintiff will present on appeal. See Fed. R. App. P. 24(a)(1)(c).

ENTER: April 20, 2017

FOR THE COURT:

**s/Eric I. Long**
ERIC I. LONG
UNITED STATES MAGISTRATE JUDGE