

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

CARROLL E. HAMILTON,)	
)	
Plaintiff,)	
)	
v.)	No. 17-2238-CSB
)	
)	
SHELLY HARDING,)	
)	
Defendant.)	

ORDER

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

This cause is before the Court on Defendant Shelly Harding’s motion for summary judgment. As explained more fully below, Harding is entitled to summary judgment because Plaintiff Carroll E. Hamilton has failed to present any evidence with which to create a genuine issue of material fact that Harding violated his Constitutional rights as he alleges in his Complaint.

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.

Initially, the Court notes that, despite being provided a notice from the Court advising him of the consequences for failing to respond to the motion for summary judgment, Hamilton has failed to respond to Harding’s motion for summary judgment,

and the deadlines for him to do so has now passed. As a result, Hamilton has failed to submit any evidence with which to create a genuine issue of material fact that Harding violated his Constitutional rights.

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, Hamilton has admitted all of the relevant facts that show that Harding is entitled to summary judgment, and the Court incorporates those facts herein. *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 Hamilton’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 Harding in order to determine whether a genuine issue of material fact exists that would preclude summary judgment in her favor. The Court finds that no such disputed fact exists and that Harding is 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).

With that in mind, the undisputed facts demonstrate the following. During the relevant time, Plaintiff Carroll E. Hamilton was a detainee at the Vermillion County Jail (“the Jail”).¹ Defendant Shelly Harding is a registered nurse who is licensed to practice in Illinois. During the relevant time, Hamilton was the director of nursing at the Jail and provided medical services to Hamilton.

Hamilton filed this suit under 42 U.S.C. § 1983 claiming that Harding acted with deliberate indifference towards his type-2 diabetes while he was a pretrial detainee at the Jail.² Specifically, Hamilton alleged that Harding inappropriately treated his diabetic condition and that her treatment violated his Due Process rights under the Fourteenth Amendment. Harding has now moved for summary judgment on Hamilton’s claim against her.

Because he was a pretrial detainee at the time that Harding allegedly violated his Constitutional rights, Hamilton’s claim is governed by the Fourteenth Amendment’s Due Process Clause. *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015). The Due Process Clause prohibits conditions that amount to punishment of a pretrial detainee for the

¹ Hamilton was a pretrial detainee at the Jail from February 13, 2017 to November 8, 2017. Hamilton is no longer in custody.

² The Court allowed Hamilton to proceed on that claim after conducting a merit review of his Complaint.

crime with which he has been charged. *Bell v. Wolfish*, 441 U.S. 520, 535, (1979). For purposes of Hamilton's specific claim, his claim is subject to the "objective unreasonableness inquiry" identified by the United States Supreme Court in *Kingsley v. Hendrickson*, ___ U.S. ___, 135 S. Ct. 2466 (2015); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018).

As one district court in this circuit has recently explained, the objective unreasonableness inquiry differs from the deliberate indifference standard previously employed by courts in evaluating medical-based claims brought by detainees:

Under *Miranda*, the proper inquiry is two steps. "The first step, which focuses on the intentionality of the individual defendant's conduct, remains unchanged and 'asks whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [plaintiff's] case.'" *McCann v. Ogle County, Illinois*, 909 F.3d 881, 886 (7th Cir. 2018)(quoting *Miranda*, 900 F.3d at 353). In the second step, a plaintiff must demonstrate the defendant's conduct was objectively unreasonable. *Miranda*, 900 F.3d at 353. This standard requires courts to focus on the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care and to gauge objectively – without regard to any subjective belief held by the individual – whether the response was reasonable. *McCann*, 909 F.3d at 886. "A detainee must prove more than negligence but less than subjective intent—something akin to reckless disregard." *Miranda*, 900 F.3d at 353.

Lucas v. Brewer, 2019 WL 251247, * 3 (S.D. Ind. Jan. 17, 2019).

In the instant case, Hamilton has failed to identify any evidence that would create a question of fact sufficient to defeat Harding's motion for summary judgment on the issue of whether Harding acted purposefully, knowingly, or recklessly in her treatment of Hamilton's type-2 diabetes. On the contrary, the undisputed evidence

shows that Hamilton received insulin for his diabetes. Harding monitored Hamilton's condition while he was detained at the Jail. And, Hamilton received other medical attention as needed.

By failing to respond or to designate evidence, Hamilton has admitted that Harding's care of his type-2 diabetes was appropriate. Given the evidence, the Court questions whether Hamilton declined to respond to Harding's motion for summary judgment because he knew that Harding's care and treatment of him was objectively reasonable. Regardless, it is clear that Harding is entitled to the summary judgment that she seeks.

IT IS, THEREFORE, ORDERED:

1. **Defendant's motion for summary judgment [37] is GRANTED. The Clerk of the Court is directed to enter judgment in Defendant's 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 thirty (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. See 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 11th day of February, 2019.

_____/s Colin S. Bruce_____
COLIN S. BRUCE
UNITED STATES DISTRICT JUDGE