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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

RONALD J. WEIGAND,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 19-2186-EIL**
	)	
	)	
SHELLY HARDING,	)	
	)	
Defendant.	)	

ORDER

ERIC I. LONG, U.S. Magistrate 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 the summary judgment that she seeks because Plaintiff Ronald J. Weigand has failed to identify a genuine issue of material fact that would preclude summary judgment in Nurse Harding's favor and because Nurse Harding has demonstrated that she is entitled to judgment as a matter of law.

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).

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 with a notice[1] from the Court advising him of the consequences for failing to respond to the motion for

[1] The Court sent this notice to Weigand at the Vermillion County Jail, where he was located when he filed this suit, and the Court also sent a copy of this notice to his present address. According to her certificate of service, Nurse Harding sent a copy of her motion for summary judgment to Weigand at his current address. Neither notice was returned to the Court as being undeliverable. Therefore, Weigand was or should have been aware of Nurse Harding's motion and also aware of the consequences of failing to respond to that motion.

summary judgment, Weigand failed to respond to Nurse Harding's motion for summary judgment, and the deadline for him to do so has now passed. As a result, Weigand failed to submit any evidence with which to create a genuine issue of material fact that Nurse Harding violated his Due Process rights under the Fourteenth Amendment.

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, by failing to respond, Weigand has admitted all of the relevant facts that show that Nurse 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 Weigand'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 Nurse Harding, including Weigand's deposition testimony, in order to determine whether a genuine issue of material fact exists that would preclude summary judgment in Nurse Harding's favor. The Court finds that no such disputed fact exists and that Nurse 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, Weigand was a pretrial detainee at the Vermillion County (Illinois) Jail ("the Jail"). Nurse Harding is a registered nurse who is licensed to practice in the State of Illinois. Nurse Harding worked at the Jail as the director of nursing during the relevant time.

On May 22, 2019, Weigand was involved in an altercation with another inmate. During this fight, the other inmate struck Weigand a couple of times in Weigand's face and head, and he bit Weigand's nose. Weigand suffered a black eye as a result of the altercation.

Approximately ten minutes after the altercation, Weigand was taken to the nurse's office at the Jail. Once he arrived at the nurse's office, Nurse Harding examined and cleaned Weigand's wounds, and she provided Weigand with triple antibiotic and an ice pack. Nurse Harding noted in his medical records that she would check Weigand's condition in a few days for any signs of infection, and she advised Weigand that he should make a request for medical treatment if anything changed before she saw him again. According to Weigand's deposition testimony, he asked Nurse Harding for stitches for his wound, for a tetanus shot, and for an STD test, but Nurse Harding told him that those tests and treatments were not medically necessary.

On May 23, 2019, Weigand submitted a medical request for a blood test, and he was examined by Nurse Marcie Miller the next day. Nurse Miller noted in the medical records that Weigand complained that his nose still hurt. Accordingly, Nurse Miller gave Weigand more triple antibiotic. However, Nurse Miller also noted that Weigand showed no sign of infection.

On May 25, 2019, Weigand submitted another medical request. As part of this request, Weigand sought a tetanus shot because he believed that he had an infection from the nose bite. On May 28, 2019, Nurse Harding examined the wound site on Weigand's nose and noted that his wound had healed and that there was no sign of infection.

On July 12, 2019, Weigand filed this suit under 42 U.S.C. § 1983 alleging a violation of his Constitutional rights. After conducting the merit review of his Complaint that is required by 28 U.S.C. § 1915A, the Court found that Weigand's Complaint stated a claim against Nurse Harding for violating (allegedly) his Fourteenth Amendment Due Process rights based upon the lack of medical treatment provided to him. Nurse Harding has now moved for summary judgment on Weigand's claim against her.

"[M]edical-care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*." *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018)(citing *Kingsley v. Hendrickson*, ___ U.S. ___, 135 S. Ct. 2466, 2475 (2015)("[P]retrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and

sadistically.'" (citations omitted)); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)("For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.")). In evaluating a detainee's medical care claim, "[t]he first step . . . 'asks whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [the plaintiff's] case.'" *McCann v. Ogle County, Illinois*, 909 F.3d 881, 886 (7th Cir. 2018) (quoting *Miranda*, 900 F.3d at 353). The second step asks "whether the challenged conduct was objectively reasonable." *Id.* "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." *Id.*; *Huertas v. Milwaukee County Common Counsel*, 2020 WL 819273, * 4 (E.D. Wis. Feb. 19, 2020).

In particular, the denial of medical care for an objectively serious medical condition violates a pretrial detainee's due process rights if it is "objectively unreasonable" in the totality of the facts and circumstances, and if jail personnel act "purposefully, knowingly, or perhaps even recklessly when they consider[ ] the consequences of their handling of [the detainee's] case." *Miranda*, 900 F.3d at 353-54. The required mental state is more than mere negligence but "less than subjective intent—something akin to reckless disregard" for the detainee's serious medical needs. *Id.* (quoting *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). A medical professional may show this level of reckless disregard for a serious health risk without

"literally ignor[ing]" the detainee. *Sherrod v. Lingle*, 223 F.3d 605, 611-12 (7th Cir. 2000) (explaining, in Eighth Amendment context, that a prison official may exhibit "disregard of a serious risk" if, for example, "a patient faces a serious risk of appendicitis, [and] the prison official gives the patient an aspirin and an enema and sends him back to his cell"). The detainee can prove that the medical professional had the requisite mental state by proving that he received treatment "'so inadequate that . . . no minimally competent professional would have so responded under those circumstances.'" *McWilliams v. Cook County*, 2018 WL 3970145, * 9-10 (N.D. Ill. Aug. 20, 2018) (quoting *Collignon v. Milwaukee County*, 163 F.3d 982, 989 (7th Cir. 1998)).

"Put another way, the treatment must have been 'so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment.'" *McWilliams*, 2018 WL 3970145, at *10 (quoting *Norfleet v. Webster*, 439 F.3d 392, 395-96 (7th Cir. 2006)). "If a 'need for specialized expertise either was known by the treating physicians or would have been obvious to a lay person, then the obdurate refusal to engage specialists permits an inference that a medical provider was deliberately indifferent to the inmate's condition.'" *McWilliams*, 2018 WL 3970145, at * 10 (quoting *Pyles v. Fahim*, 771 F.3d 403, 412 (7th Cir. 2014)(internal quotation marks omitted)); *Smith v. Kapotas*, 2020 WL 553619, * 3–4 (N.D. Ill. Feb. 4, 2020).

In the instant case, Weigand has offered no evidence with which to defeat Nurse Harding's motion for summary judgment. Specifically, Weigand has offered no evidence with which to create a genuine issue of material fact that Nurse Harding's

conduct with regard to his medical needs was objectively unreasonable. Accordingly, Nurse Harding is entitled to the summary judgment that she seeks.

As noted *supra*, the undisputed evidence demonstrates that, within ten minutes of his altercation with another inmate, Nurse Harding provided medical attention to him. Although he believed that further treatment and tests were necessary, Weigand admitted during his deposition that that he had no infection within one week of the altercation. Moreover, Weigand admitted at his deposition that he currently did not have any visible signs or symptoms of an STD or any infections.

Perhaps more importantly, Nurse Harding's medical opinion, based on her training and experience, was that Weigand did not need a blood test or a shot because his wound had completely healed, and he did not have any symptoms of any STDs. Further, Nurse Harding opined that an STD cannot be transmitted through saliva. Weigand has offered no evidence to refute or dispute Nurse Harding's opinion.

None of these facts demonstrate that Nurse Harding acted objectively unreasonable with regard to Weigand's medical needs. Instead, this dispute appears to be one in which Weigand disagreed with Nurse Harding's diagnosis and treatment. However, a mere disagreement regarding a course of treatment does not constitute a violation a detainee's Fourteenth Amendment rights. *Hutt v. Liberty Healthcare Corp.*, 2017 WL 11501507, * 6 (C.D. Ill. Dec. 13, 2017)("Disagreement between a detainee and medical professionals about the proper course of treatment, however, generally is insufficient, by itself, to establish a constitutional violation."); *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006).

IT IS, THEREFORE, ORDERED:

1. Defendant's motion for summary judgment [23] is GRANTED. The Clerk of the Court is directed to enter judgment in all Defendants' favor and against Plaintiff. All other pending motions are denied as moot, and this case is terminated. 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. 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 2nd day of June, 2020

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