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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

DONALD LANGSTON,	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 2:21-cv-02205-SEM**
	)	
PATRICK HARTSHORN *et al.*,	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

SUE E. MYERSCOUGH, United States District Judge:

Before the Court is a motion for summary judgment [28] filed by Defendants Laurie Bernardi, Shelly Hardin, Pat Hartshorn, Colin Osterbur, and Vermilion County. Plaintiff *pro se* Donald Langston has not responded. The Court grants Defendants' motion for summary judgment based on the Court's review of the pleadings, depositions, affidavits, and other supporting documents.

I. SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment 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). "A dispute is 'genuine' 'if the evidence is such that a

reasonable jury could return a verdict for the nonmoving party.'" *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party must provide 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). "If the moving party has properly supported his motion, the burden shifts to the non-moving party to come forward with specific facts showing that there is a genuine issue for trial." *Spierer v. Rossman*, 798 F.3d 502, 507 (7th Cir. 2015).

"When opposing a properly supported motion for summary judgment, the non-moving party must 'cit[e] to particular parts of materials in the record' or 'show[] that the materials cited do not establish the absence … of a genuine dispute.'" *Melton v. Tippeconoe County*, 838 F.3d 814, 818 (7th Cir. 2016) (quoting Fed. R. Civ. P. 56(c)). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. A

scintilla supporting the nonmovant's position cannot defeat a motion for summary judgment; "there must be evidence on which the jury could reasonably find for the nonmovant." *Id.* at 252.

II. BACKGROUND

Plaintiff filed a complaint [1] alleging constitutional violations during his detention at the Vermilion County Jail ("Jail"). After screening Plaintiff's pleading, the Court determined that he stated plausible Fourteenth Amendment claims for inhumane conditions of confinement, deliberate indifference to Plaintiff's serious medical needs, and a First Amendment retaliation claim. (ECF 11: pp. 2-3.)

III. UNDISPUTED MATERIAL FACTS

Defendants' motion for summary judgment included a section outlining the undisputed material facts in this case. (ECF 28: pp. 1-9, ¶¶ 1-49); *see also* Local Rule 7.1(D)(1)(b) (stating that a motion for summary judgment must include a section outlining the undisputed material facts). Under Local Rule 7.1(D)(2)(b), a party opposing a motion for summary judgment must respond to the moving party's undisputed material facts and provide additional material facts that must be supported by admissible evidence in the record.

Plaintiff has not filed a response to Defendants' summary judgment motion despite being granted an extension by the Court. Under Local Rule 7.1(D)(2)(b)(6), a party's "failure to respond to any numbered fact will be deemed an admission of the fact." A district court does not abuse its discretion by strictly enforcing this rule, even against a *pro se* litigant. *Zoretic v. Darge*, 832 F.3d 639, 641 (7th Cir. 2016); *Greer v. Bd. of Educ.*, 267 F.3d 723, 727 (7th Cir. 2001). Therefore, the Court relies on the following supported facts provided in Defendants' motion for summary judgment.

On February 7, 2020, Plaintiff was arrested after an altercation and transported to a hospital for a broken arm. (28-1: p. 20.) Plaintiff's medical history showed various ailments, including diabetes, high cholesterol, and high blood pressure. (*Id.* p. 21.) Plaintiff was taking multiple medications for his diabetes, including 1,000 milligrams of Metformin and Glipizide twice daily. (*Id.* pp. 21, 24.) Plaintiff was not prescribed insulin for his diabetes before arriving at the Jail. (*Id.* p. 24.)

Plaintiff's initial medical examination occurred on February 19, 2020. Plaintiff told Marci Miller, a nurse, about his medical history, hypertension, diabetes, and high cholesterol. (*Id.* pp. 55-

56.) Miller ordered that Plaintiff continue his Metformin and Glipizide medication. (*Id.* pp. 57.)

On May 11, 2020, Defendant Harding, a nurse, saw Plaintiff about left arm pain. (28-2: p. 1, ¶11.) After examining Plaintiff, Hardin told him he did not need a sling for his broken arm. Instead, Hardin advised Plaintiff to start using his arm and offered Tylenol, which Plaintiff declined. (*Id.* pp. 71-72; 28-2, p. 2, ¶ 11.)

On May 21, 2020, Plaintiff told Nurse Miller he did not want insulin but would not object if mandated. Miller advised that Plaintiff should monitor his diet and see the nurse practitioner if his blood sugar remained high. (28-1: pp. 73-74.)

During Plaintiff's initial few months at the Jail, he did not regularly check his blood sugar level and was not on the list of detainees using Accu-Chek, a blood sugar meter. (*Id.* p. 33.) However, Plaintiff occasionally asked and was provided a meter to test his blood sugar. (*Id.* at pp. 34-35.) When corrections officers dispensed medications every morning and before lunch, dinner, and bedtime, Plaintiff could check his blood sugar, and the corrections officer recorded the result for the medical staff. (*Id.* p. 35.) Plaintiff

was later added to the list of diabetic detainees who could check blood sugar levels upon request. (*Id.* pp. 34-35, 65, 68-69, 72-73.)

On June 5, 2020, Defendant Harding and Nurse Miller saw Plaintiff about his diabetic concerns. (*Id.* at p. 74.) They ordered blood sugar monitoring four times daily and again advised Plaintiff to schedule a visit with the nurse practitioner if his blood sugar did not decrease. (*Id.* at pp. 74-75.)

Plaintiff saw Nurse Practitioner Steve Skimehorn on June 12, July 10, August 28, September 18, and October 30, 2020. (*Id.* p. 63.) After Skimehorn's first visit with Plaintiff on June 12, 2020, Skimehorn increased Plaintiff's dosage of Metformin. (*Id.* p. 64.) On August 28, 2020, Skimehorn noted that Plaintiff's blood sugar was still high and raised Plaintiff's glipizide dosage (from 10 mg to 20 mg) to control Plaintiff's blood sugar. (*Id.* p. 65.)

On September 11, 2020, after concluding that Plaintiff's blood sugar was still high, Nurse Practitioner Skimehorn ordered insulin. On September 21, 2020, Nurse Miller instructed Plaintiff on treating his diabetes. (*Id.* p. 60.) On two occasions in 2020, Plaintiff did not receive his Metformin medications for four consecutive days. After

Plaintiff complained about the missing drug, the medical staff corrected the error. (*Id.* pp. 76-78.)

Since August 2020, Plaintiff has taken slow-acting insulin to maintain his blood sugar, which has been controlled over the last two years. (*Id.* at pp. 40-41, 62, 79, 85. 43.) Plaintiff's blood sugar occasionally rises over 200, but Plaintiff's two blood sugar readings on the day of his deposition (May 10, 2022) were 69 and 90. Plaintiff acknowledged that the insulin assisted in controlling his diabetes. (*Id.* pp. 41-42.)

In response to Plaintiff's request for diabetic foods, in November 2020, Defendant Harding ordered peanut butter sandwiches that Plaintiff continued receiving. (*Id.* pp. 82-86.) Plaintiff is also provided diabetic jelly instead of regular jelly. (*Id.* p. 84.) Plaintiff does not dispute his medical records nor that he was seen by nurses and medical professionals on the dates listed in the Jail's records. (*Id.* at pp. 45-46.) Although Plaintiff believes he did not regain full range of motion in his left wrist, he has not submitted additional medical requests regarding his left arm after May 10, 2020. (*Id.* at pp. 61, 92-93.)

The procedure to administer medications requires detainees to line up. A corrections officer then opens a pill box with the detainee's name, places the pills in the detainee's hand, and provides water. The officer then asks the detainee to stick out his tongue to prove he swallowed the medication. (*Id.* pp. 49-50; 28-3: p. 1, ¶ 5.) Plaintiff did not like this procedure. (82-1: p. 49.)

On July 2 and 6, 2021, Plaintiff was upset after Defendant Bernardi asked Plaintiff to open his mouth to prove he had ingested his medications. Bernardi later wrote two incident reports for what she believed to be Plaintiff's insolence and disobedience of a direct order. (*Id.* pp. 51-54, 101.) Bernardi wrote that Plaintiff (1) repeatedly refused to take his medications as directed, (2) complained that he wanted to take his medication in a usual manner, and (3) argued with Bernardi and exhibited a defiant demeanor. (28-3: p. 2, ¶ 10.)

As a result of the incident reports, Plaintiff was placed in disciplinary segregation for three days. (28-1: p. 54.) Inmates in disciplinary segregation remain in their cells for 23 hours and are given access to a day room for one hour daily. (*Id.* p. 51.) The

conditions in disciplinary segregation are otherwise the same as for inmates housed in non-disciplinary cell blocks at the Jail. (*Id.*)

At the time of Plaintiff's May 2022 deposition, he was housed at the Jail in G block. Detainees in G block can access a small outdoor patio area. (*Id.* at p. 91.) Plaintiff was unhappy that inmates did not have regular outdoor access. (*Id.* p. 95.) Inmates at the Jail are usually given new jumpsuits twice a week. However, according to Plaintiff, he did not receive a new jumpsuit for over two weeks on four occasions. (*Id.* p. 96.)

Plaintiff stated that he was suing Defendants Hartshorn and Osterbur because "they should know what is going on with this Jail, everything. That is about it." (*Id.* p. 94.) As to Defendant Bernardi, Plaintiff asserted that she "disrespected" him by mandating Plaintiff prove he swallowed the drugs administered. (*Id.* p. 54.) Plaintiff filed suit against Defendant Hardin because she failed to schedule a follow-up orthopedic exam for Plaintiff's broken arm. (*Id.* p. 93.)

IV. ANALYSIS

A. Plaintiff's Failure to Respond to Defendants' Summary Judgment Motion

As noted earlier, Plaintiff did not file a response to Defendants' motion for summary judgment. As a result, Plaintiff fails to comply with Rule 56(c) in that he has not cited "particular parts of materials in the record" that support his opposition or "show[] that the materials cited do not establish the absence…of a genuine dispute." Fed. R. Civ. P. 56(c)(1)(A), (B). Plaintiff's failure is deemed an admission of the summary-judgment motion. *See* Local Rule 7.1(D)(2) ("A failure to respond will be deemed an admission of the [summary-judgment] motion."). Although Plaintiff's failure to respond requires this Court to deem Defendants' factual assertions admitted, summary judgment in favor of the movant is not automatic. *Raymond v. Ameritech Corp.*, 442 F.3d 600, 608 (7th Cir. 2006). The ultimate burden remains with Defendants to show that they are entitled to judgment as a matter of law. *Id.*

B. Deliberate Indifference

Medical care claims brought by pretrial detainees under the Fourteenth Amendment are subject to an objective standard. *See*

Miranda v. County of Lake, 900 F.3d 335, 352 (7th Cir. 2018) (citing *Kingsley v. Hendrickson*, 576 U.S. 389 (2015)). Under *Miranda*, a court must conduct two separate inquiries. The first inquiry asks whether the "defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of [an inmate's] case." *Id. at 353.* "[I]t will not be enough [for a plaintiff] to show negligence or gross negligence." *Id.*

The second inquiry asks whether the defendants' acts were objectively unreasonable. *Id.* at 354. The latter inquiry is case-specific and must be made from the perspective of a reasonable official present when the relevant decisions were made, including what the official "knew at the time, not with the 20/20 vision of hindsight." *Kingsley*, 576 at 397.

Applying this objective standard to the record in this case, the Court concludes that no reasonable jury could find that Defendant Harding or any other medical professional's treatment decisions were objectively unreasonable. Instead, the evidence establishes that Plaintiff experienced a deliberate, measured course of medical treatment that was altered, adjusted, and accommodated based on Plaintiff's complaints, objective testing, and medical observations.

Although Plaintiff complains that Defendant Hardin did not schedule a follow-up exam for his broken arm, this alone does not satisfy the objective standard for deliberate indifference under the Fourteenth Amendment.

C. Conditions of Confinement

In *Hardeman*, the Seventh Circuit extended the objective standard the Supreme Court addressed in *Kingsley* to all conditions of confinement claims for detainees. 933 F.3d at 823 ("We therefore hold that *Kingsley*'s objective inquiry applies to all Fourteenth Amendment conditions-of-confinement claims brought by pretrial detainees.").

In sum, Plaintiff must come forward with evidence: (1) that he faced objectively severe conditions, meaning a substantial risk of serious harm; (2) that Defendants acted purposefully, knowingly, or recklessly concerning the consequences of their actions; and (3) that Defendants' actions were objectively unreasonable. *Hardeman*, 933 F.3d at 827 (Sykes, J., concurring) ("[N]othing in Kingsley removed the threshold requirement in every conditions-of-confinement claim: 'the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.' That's

because only 'objectively [and] sufficiently serious' deprivations are actionable as a violation of the Constitution.") (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). "In other words, a plaintiff must show that [ ] a defendant acted intentionally or recklessly as he knew, or should have known, that the condition posed an excessive risk to health or safety and failed to act with reasonable care to mitigate the risk." *Epps v. Patriquin*, 2020 WL 4505875, * 3 (N.D. Ill. 2020)(internal quotation marks omitted).

Plaintiff's claim that he had to wear the same Jail jumpsuit for over two weeks on four occasions without more does not demonstrate conditions of confinement that establish objectively serious deprivation under the Fourteenth Amendment objective standard. *See Perkins v. Williams*, 2018 WL 453743, at *2 (N.D.Ill. 2018) (concluding that not being provided a jumpsuit for over a year where laundry services were available, and the plaintiff had access to soap and water was not sufficiently serious).

Additionally, Plaintiff's claims that in May 2022, he was housed in a cell block that only provided access to an outdoor patio instead of a larger recreation area is insufficient to establish a constitutional deprivation. *See Smith v. Dart*, 803 F.3d 304, 313

(7th Cir. 2015) (affirming the district court's dismissal of pleading where inmate alleged, he could not go outside for recreation but did "not allege that his movements [were] restricted to the point that he [was] unable to exercise inside his cell or in jail common areas").

D. Retaliation

To make out a prima facie case of First Amendment retaliation, a plaintiff must establish that (1) he engaged in activity protected by the First Amendment, (2) he suffered a deprivation that would likely deter First Amendment activity in the future, and (3) the First Amendment activity was "at least a motivating factor" in the defendants' decision to take the retaliatory action. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Plaintiff provides no evidence establishing the protected First Amendment activity he engaged in to satisfy the first prong of his burden. Instead, Plaintiff claims that he became upset when Defendant Bernardi asked Plaintiff to prove he had ingested his medications. Although Plaintiff "has a general First Amendment right to criticize . . . [a prison's] policies, he must do so 'in a manner consistent with his status as a prisoner.'" *Watkins v. Kasper*, 599 F.3d 791, 797 (7th Cir. 2010) (quoting *Freeman v. Tex. Dep't of*

Criminal Justice, 369 F.3d 854, 864 (5th Cir. 2004)) ("Instead of openly criticizing [the prison librarian's] directives during a meeting with other law clerks, [the prisoner] could have taken the less disruptive approach of filing a written complaint.").

The facts show that Defendant Bernardi wrote the incident reports because Plaintiff (1) repeatedly refused to take his medications as directed, (2) complained that he wanted to take his medication in a usual manner, and (3) argued with Bernardi and exhibited a defiant demeanor. Thus, Plaintiff's criticism was not protected speech under the First Amendment. *See Watkins v. Kasper*, 599 F.3d 791, 797 (7th Cir. 2010) (holding that an inmate's speech challenging a prison librarian's policies, which the inmate made in the presence of other inmates, impeded the librarian's authority and ability to implement library policy and, therefore, was not protected speech under the First Amendment).

Accordingly, the Court concludes that no reasonable juror could conclude that Defendants violated Plaintiff's constitutional rights on this record.

IT IS THEREFORE ORDERED:

1) **The Court GRANTS Defendants' Motion for Summary Judgment [28]. The Court DIRECTS the Clerk of the Court to enter judgment in favor of Defendants and against Plaintiff. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for the $350 filing fee.**

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 MUST identify the issues the Plaintiff 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); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be allowed to submit a statement of his grounds for appealing so that the district judge "can make a reasonable 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 does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.**

Entered March 31, 2023.

s/ *Sue E. Myerscough*

SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE