043133/19344/MHW/REN/SLB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHNNY JONES,

Plaintiff,

v.

WEXFORD HEALTH SOURCES, INC. and DR. MARSHALL JAMES,

Defendants.

Case Number 17 cv 8218

Honorable Mary M. Rowland

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants, WEXFORD HEALTH SOURCES, INC. ("Wexford") and DR. MARSHALL JAMES ("Dr. James"), by and through their attorneys, Matthew H. Weller, Ronald E. Neroda and Sandra L. Byrd of CASSIDAY SCHADE LLP, and for their Memorandum of Law in Support of their Federal Rule of Civil Procedure 56 Motion for Summary Judgment, state as follows:

I. INTRODUCTION

Plaintiff, JOHNNY JONES, has filed a complaint pursuant to 42 U.S.C. § 1983 ("§ 1983") alleging a violation of his Eighth Amendment rights under the United States Constitution as well as a state law negligence claim. [Dkt. #1]. According to Plaintiff, Dr. Marshall James, the former medical director at Sheridan Correctional Center ("Sheridan") provided Plaintiff with inadequate medical treatment while Plaintiff was an inmate at Sheridan. Plaintiff further alleges that Dr. James' former employer, Wexford Health Sources, Inc. is vicariously liable for Dr. James' alleged medical malpractice. Plaintiff's allegations that Wexford is likewise vicariously liable for Dr. James' alleged deliberate indifference were previously dismissed. [Dkt. #23].

Plaintiff has not produced sufficient evidence to maintain this action beyond the summary judgment stage. The undisputed record before this court establishes that Dr. James did not act with deliberate indifference to Plaintiff's serious medical needs. In fact Plaintiff admitted that there was never a time following his knee injury when he was unable to access medical care or when he was denied medical care or. Instead, Plaintiff's claim is nothing more than a disagreement with the care he received—more specifically, with the timing of the care he received—an allegation that is not actionable under § 1983. Likewise, Plaintiff has not produced sufficient evidence that Dr. James was negligent in the care he rendered. Plaintiff has failed to come forth with any qualified medical opinion that establishes a medical malpractice claim against Dr. James, which necessarily means that Plaintiff cannot prove Wexford is vicariously liable for Dr. James' conduct. Furthermore, even if Plaintiff could establish that Dr. James failed to act with the appropriate medical standard of care, Plaintiff has failed to put forth evidence that proves that any such failure has caused him any injury or harm. As such, both defendants are entitled to judgment as a matter of law.

II. MATERIAL FACTS

Defendants incorporate their Statement of Undisputed Facts Pursuant to Local Rule 56.1 and accompanying exhibits, filed concurrently with their Motion for Summary Judgment and supporting Memorandum of Law.

III. ARGUMENT

A. Summary Judgment Standard

Summary judgment is proper if "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). After a motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is

a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). A party can only successfully oppose summary judgment "when it presents definite, competent evidence to rebut the motion." *Essex v. United Parcel Serv., Inc.*, 111 F.3d 1304, 1308 (7th Cir. 1997).

B. Plaintiff Failed to Establish Dr. James Was Deliberately Indifferent

1. *Overview of Requirements to Sustain a Claim of Deliberate Indifference*

Plaintiff's claim of deliberate indifference against Dr. James fails as a matter of law. Correctional officials are prohibited from acting with deliberate indifference to an inmate's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Deliberate indifference has both an objective component and a subjective component: (i) the inmate must have an objectively serious medical need, and (ii) the defendant must be subjectively aware of and consciously disregard the inmate's medical need. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (emphasis added). The burden rests on the inmate to prove both elements and the burden to clear deliberate indifference is high. *Roe v. Elyea*, 631 F.3d 843, 857 (7th Cir. 2011); *Hernandez v. Tex. Dep't of Protective & Regulatory Servs.*, 380 F.3d 872, 882 (5th Cir. 2004).

Deliberate indifference "is merely a synonym for intentional or criminally reckless conduct." *Salazar v. City of Chicago*, 940 F.2d 233, 238 (7th Cir. 1991); *Duckworth v. Franzen*, 780 F.2d 645, 652-53 (7th Cir. 1985). Deliberate indifference constitutes unnecessary and wanton infliction of pain, which is "repugnant to the conscience of mankind," or which is "so grossly incompetent, inadequate, or excessive as to shock the conscience or be intolerable to fundamental fairness." *Estelle v. Gamble* at 106-07. Negligence, gross negligence, or even tortuous recklessness is not enough. *Id.*

Moreover, liability under §1983 requires direct and personal involvement in the situation that causes injury to an inmate. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). Thus, "to be liable under Section 1983, the individual defendant must have caused or participated in a constitutional deprivation." *Id.* The burden is on the plaintiff to establish personal involvement through pleadings and evidence. *Johnson v. Pelker*, 891 F.2d 136, 139 (7th Cir. 1989).

As it pertains to medical decision making, in order to infer deliberate indifference on the basis of a prison healthcare professional's treatment decision, the medical providers treatment decision must be so far afield of accepted professional standards that it raises the inference that the decision was not actually based on a medical judgment. *Forbes v. Edgar*, 112 F.3d 262, 267 (7th Cir.1997). A medical professional is "entitled to deference in treatment decisions unless no minimally competent medical professional would have so responded under these circumstances." *Sain v. Wood*, 512 F.3d 886, 894-95 (7th Cir. 2008). Worded another way, if even one minimally competent medical professional signs off on the treatment decisions made by the defendant medical professional, then the plaintiff cannot sustain his claim of deliberate indifference any further.

This is an exceedingly high standard for Plaintiff to clear. As one District Judge noted earlier this year, "a prisoner's Eighth Amendment right is violated only when the treatment he receives is 'blatantly inappropriate.' A prisoner with a serious medical need receives blatantly inappropriate medical treatment if he is 'literally ignored,' or if the treatment he does receive is such that 'no minimally competent professional would have so responded under those circumstances.'" *Johnson v. Obaisi*, 2020 U.S. Dist. LEXIS 13661 (N.D. Ill. Jan. 28, 2020) (emphasis added) (internal citations omitted).

Furthermore, "[an inmate] is not entitled to demand specific care. [H]e is not entitled to the best care possible. [H]e is entitled to reasonable measures to meet a substantial risk of serious harm to [him]." *Forbes v. Edgar* at 267. Mere disagreement with a doctor's recommended course of treatment does not constitute deliberate indifference. *Edwards v. Snyder*, 478 F.3d 827, 831 (7th Cir.2007).

Medical decisions, such as diagnostic testing, which are classic examples of matters for medical judgment are beyond the Eighth Amendment's purview. *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996). Just last month, the Seventh Circuit affirmed this well established legal maxim. "[A] failure to seek a particular diagnostic technique, like imaging, 'is a classic example of a matter for medical judgment….'" *Murphy v. Wexford Health Sources, Inc.*, 2020 U.S. App. LEXIS 19055, *10 (7th Cir. 2020) (quoting *Estelle v. Gamble* 429 U.S. at 107). A prison official "is free from liability if he 'responded reasonably to the risk, even if the harm ultimately was not averted.'" *Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010).

Moreover, in cases where prison officials delayed rather than denied medical assistance to an inmate, courts require plaintiffs to offer verifying medical evidence that the delay (not the inmate's underlying medical condition) caused some degree of harm. *Williams v. Leifer*, 491 F.3d 710, 714-15 (7th Cir. 2007).

2. Dr. James Was Not Deliberately Indifferent to Plaintiff's Serious Medical Needs

For purposes of this Motion, Dr. James does not contest that Plaintiff's knee injury meets the legal definition of a serious medical need. Nor does Dr. James contest that he was subjectively aware of the fact that Plaintiff had injured his knee. Plaintiff, however, must also establish that despite Dr. James' awareness of Plaintiff's knee injury, Dr. James nevertheless

purposely and deliberately withheld medical treatment. *Sellers v. Henman*, 41 F.3d 1100, 1103 (7th Cir. 1994) (emphasis added). This is a burden Plaintiff cannot meet.

Instead, the facts before this Court establish the exact opposite—Plaintiff received regular and consistent care for his knee injury. It is undisputed that immediately after his fall on Saturday, November 14, Plaintiff was taken to the healthcare unit where he spent an hour with a nurse. (SOF ¶ 13). At that time, Plaintiff's knee was not swollen, tender or buised. It did not have any opens wounds and Plaintiff was not in a lot of pain. *Id*. The nurse contacted Dr. James via telephone, and Dr. James ordered crutches and pain medication for Plaintiff. *Id*. It is likewise undisputed that on Monday, November 16, Plaintiff was seen by Dr. James who spent 20 minutes examining Plaintiff. (SOF ¶ 14). At that time, Plaintiff's knee was slightly swollen, did not have any deformities and there was a small amount of movement in the patella. *Id*. Dr. James compared Plaintiff's injured left knee to his uninjured right knee and determined that both knees had a similar presentation. *Id*. At this time, Dr. James ordered x-rays, pain medication, crutches, and that Plaintiff rest his knee by forgoing activities. *Id*.

A week later, Dr. James gave Plaintiff the results of his x-ray which were that Plaintiff had some osteoarthritis of his knee joint, there was mild swelling, Plaintiff's patella was slightly high-riding, there were no loose bodies and no evidence of an acute boney fracture. (SOF ¶ 15). The x-ray results are likewise undisputed. Plaintiff knew the process for accessing healthcare at Sheridan, (SOF ¶ 11), was never refused medical care related to his knee injury and every time he requested medical care for his knee injury it was provided. (SOF ¶ 16).

On December 8, 2015, when Plaintiff's symptoms were not improving with conservative treatment, Dr. James referred Plaintiff for an MRI. (SOF ¶ 17). Dr. James' referral was approved by Wexford on December 15, 2015 at which time it became the responsibility of IDOC staff to

schedule Plaintiff's off-site MRI. *Id*. Plaintiff had his MRI on January 18, 2016. (SOF ¶ 18). Between the date of his injury and the date of his MRI Plaintiff saw Dr. James on several occasions. *Id*.

Plaintiff's MRI showed that Plaintiff had a complete tear of his patellar tendon and Dr. James referred Plaintiff to see Dr. Ankhur Behl, an orthopedic surgeon. (SOF ¶¶ 6 & 19). Dr. Behl successfully repaired Plaintiff's patellar tendon on February 16, 2016. (SOF ¶ 19). The day after his surgery, Plaintiff saw Dr. James in the Sheridan infirmary and Plaintiff saw Dr. James three times a week every week thereafter until Plaintiff was released from the IDOC on June 6, 2016. (SOF ¶ 20). From the date of his surgery until the day he was released from the IDOC, Plaintiff was housed in the prison infirmary where he had access to medical care 24 hours a day. *Id*.

Clearly Dr. James met his constitutional obligations to Plaintiff in relation to his knee injury. Plaintiff's only complaint is that too much time passed between the date of his injury and the date of his MRI. (SOF ¶ 16). Plaintiff, however, has failed to put forth any evidence that any perceived or actual delay was the fault of Dr. James. Deliberate indifference requires personal participation, *Pepper v. Vill. of Oak Park*, 430 F.3d 805, 810 (7th Cir. 2005), and Dr. James did not personally participate in scheduling Plaintiff's MRI. (SOF ¶ 17).

The Seventh Circuit has advised that an inmate cannot hold a prison official liable for a job that is not his own. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) ("[b]ureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job. The division of labor is important not only to bureaucratic organization but also to efficient performance of tasks; people who stay within their roles get more work done, more effectively, and cannot be hit with damages under § 1983 for not being ombudsmen.") Dr. James was not

involved in the scheduling of Plaintiff's MRI, (SOF ¶ 17), thus, as a matter of law, Dr. James cannot be held responsible for any perceived delay in Plaintiff receiving an MRI. If Plaintiff is upset with the length of time it took to undergo an MRI, then he must sue the individuals who personally participated in that process rather than attempting to hold Dr. James liable.

As such, Plaintiff's complaint as to any delay in treatment must necessarily be limited to the time between Plaintiff's first encounter with Dr. James—November 16, 2015—and Dr. James ordering the MRI—December 8, 2015. (SOF ¶¶ 13 & 17). When Plaintiff initially presented to Dr. James, his physical symptoms—little swelling, little pain and no bruising—were atypical for a complete patellar rupture. (SOF ¶¶ 28 & 29). Dr. James ordered an x-ray which came back essentially normal. (SOF ¶ 29). Dr. James ordered pain medication and crutches, that Plaintiff rest his knee, and not go to any activities. (SOF ¶ 14). When this conservative approach did not alleviate Plaintiff's symptoms, Dr. James ordered an MRI. (SOF ¶ 17).

Dr. James' treatment of Plaintiff is a classic example of medical judgment. Plaintiff can only prevail on a claim of deliberate indifference against Dr. James if he can show that no minimally qualified doctor would have responded to his complaints in the way that Dr. James responded. *Sain*, 512 F.3d at 894-95. Here, Dr. Prodromos reviewed Plaintiff's medical records. Not only does he support the medical care rendered by Dr. James, he found that for a general practitioner to even suspect a ruptured patellar tendon, as did Dr. James, was "incredibly astute." (SOF ¶ 30). As well, Dr. Behl, Plaintiff's surgeon, agrees that if a patient presented to him with the same symptoms Plaintiff presented to Dr. James, even Dr. Behl, a trained orthopedic surgeon, would not suspect a ruptured patellar tendon. (SOF ¶ 28). Hence, at least one "minimally competent physician" supports Dr. James medical care and his treatment decisions constitute exercises in medical judgment, which are afforded deference.

Thus, while Plaintiff may disagree with Dr. James' decisions related to when the MRI was ordered, this does not constitute deliberate indifference. *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996). (Medical decisions which are classic examples of matters for medical judgment are beyond the Eighth Amendment's purview.); *see also, Murphy v. Wexford Health Sources, Inc.*, 2020 U.S. App. LEXIS 19055, *10 (7th Cir. 2020) ("[A] failure to seek a particular diagnostic technique, like imaging, 'is a classic example of a matter for medical judgment….'"). Dr. James is entitled to judgment as a matter of law.

3. Plaintiff Failed to Prove His Medical Malpractice Claim Against Dr. James

In a medical malpractice case, the plaintiff must prove: "'(1) the standard of care against which the medical professional's conduct must be measured; (2) the defendant's negligent failure to comply with that standard; and (3) that the defendant's negligence proximately caused the injuries for which the plaintiff seeks redress.'" *Wiedenbeck v. Searle*, 385 Ill.App.3d 289, 292 (1st Dist. 2008) (quoting *Hussung v. Patel*, 369 Ill.App.3d 924, 931 (2007)). Except in certain limited instances, this standard of care must be established through expert medical testimony. *Chiero v. Chicago Osteopathic Hospital*, 74 Ill. App. 3d 166, 172 (1st Dist. 1979). Plaintiff must then prove that, judged in light of that standard, the doctor was negligent and that his want of skill or care proximately caused plaintiff's injuries. *Borowski v. Von Solbrig*, 328 N.E.2d 301 (1975).

Plaintiff's proof falls short of this requirement. Plaintiff's retained expert in this matter, Dr. Vincent Cannestra, puts forth a conclusory and factually unsupported opinion—he concludes that Dr. James deviated from the standard of care in his evaluation and treatment of Plaintiff because he did not conduct a thorough exam and did not immediately order an MRI of Plaintiff's knee. (SOF ¶ 33) In doing so, Dr. Cannestra draws conclusions that are unsupported by the

record, ignores the facts with which Dr. James was initially presented, and attempts to hold Dr. James to the standard of care of a trained orthopaedic surgeon instead of assessing Dr. James' treatment of Plaintiff using the standard of care of a general practitioner.

First, Dr. Cannestra faults Dr. James' physical examination of Plaintiff during their initial encounter. Dr. Cannestra draws this conclusion based entirely on the fact that Dr. James' notes do not reflect what Dr. Cannestra believes they should. (SOF ¶ 33). In doing so, Dr. Cannestra completely ignores Dr. James' and Plaintiff's testimony regarding the actual exam that was performed. Plaintiff admitted that Dr. James spent 20 minutes performing his physical examination. (SOF ¶ 14). Likewise, Dr. James testified that he examined Plaintiff's knee, compared the injured knee to the uninjured knee, noted that the injured knee did not have any deformities, and ordered confirmatory imaging. (SOF ¶ 16). Plaintiff has not offered any testimony by Dr. Cannestra or anyone else that Dr. James' actual examination fell below the standard for a general practitioner, instead he has only offered Dr. Cannestra's unsupported opinion that Dr. James' documentation should have been different. This is not what the law requires.

Next, Dr. Cannestra ignores the facts with which Dr. James was faced when he examined Plaintiff. At the time of Dr. James' examination, Plaintiff's knee was slightly swollen and Plaintiff's pain level was low. (SOF ¶ 14). This presentation is inconsistent with a ruptured patellar tendon. (SOF ¶¶ 28 & 29). Again, as noted above, when Plaintiff's surgeon was asked if a patient presented to him with the same symptoms Plaintiff presented to Dr. James and an x-ray result that showed a slightly high-riding patella he stated he would not expect the patient to have a ruptured patellar tendon. *Id*. This is a conclusion that is fully supported by Dr. Prodromos. (SOF ¶ 29).

Dr. Cannestra has failed to explain how Dr. James, a general practitioner, was negligent in his treatment of Plaintiff when Plaintiff presented with symptoms that are atypical of a person with an acute patellar tendon rupture. Dr. Behl testified that a person with a ruptured patellar tendon would show an inability to extend the knee, a palpable defect at the inferior aspect of the patella, a patella that is superiorly migrated which is confirmed by x-ray, immediate significant bloody swelling, and immediate and continued pain. (SOF ¶28). Plaintiff demonstrated none of these symptoms.

Finally, Plaintiff has failed to offer any expert testimony that Dr. James' supposed negligence caused Plaintiff any harm. Both of Plaintiff's claims in this matter require that he establish that he has purportedly suffered an injury as a result of the actions of Dr. James. Plaintiff's allegations of medical malpractice require that proximate cause of an injury be established by expert testimony to a reasonable degree of medical certainty. *Townsend v. University of Chicago Hospitals*, 318 Ill. App. 3d 406, 413, 741 N.E.2d 1055 (1st Dist. 2001). "The causal connection must not be contingent, speculative or merely possible." *Saxton v. Toole*, 240 Ill. App. 3d 204, 210-211 (1st Cir. 1992).

Similarly, in a deliberate indifference case based upon a delay in receiving medical treatment, the relevant issue is not whether the underlying condition is serious; but rather, the medical consequences of a delay in receiving in such treatment. *Jackson v. Pollion*, 733 F.3d 786, 790 (7th Cir. 2013). Indeed, in *Jackson*, the Seventh Circuit reasoned that "[n]o matter how serious a medical condition is, the sufferer from it cannot prove tortious misconduct (including misconduct constituting a constitutional tort) as a result of failure to treat a condition without providing evidence that the failure caused injury or a serious risk of injury." *Id.*

Assuming for the purpose of this Motion that Plaintiff's assertion related to the timing of his MRI is true, Plaintiff's claims still fail as a matter of law because he has not come forth with any qualified medical opinions that he suffered harm as a result of not timely receiving an MRI. To the contrary, Plaintiff's own surgeon testified that the outcome of the surgery was not affected by the alleged delay.

Dr. Behl unequivocally testified that his surgery on Plaintiff's knee was a success. (SOF ¶ 19). While the surgery may not have occurred within an ideal timeframe, any delay that occurred did not affect the outcome of the surgery. *Id*. Likewise, Plaintiff's second surgeon, Dr. Verma, indicated that Plaintiff's second surgery was purely elective and very common follow-up surgery to Plaintiff's first surgery. (SOF ¶ 23). According to Dr. Verma, Plaintiff's medical history, including any perceived delay in Plaintiff's initial surgery, to be irrelevant. *Id*.

In fact, Dr. Verma unequivocally asserted that Plaintiff's follow through with Dr. Verma's post-surgery orders, including physical therapy and wearing a knee brace, was critical to Plaintiff having an optimal recovery. (SOF ¶¶ 24-27). Likewise, months after Plaintiff's second surgery, Dr. Verma informed Plaintiff that there was no anatomical reason for Plaintiff's complaints of continued pain and no reason for Plaintiff to continue seeing Dr. Verma. (SOF ¶ 26).

Plaintiff completed only about a quarter of the ordered physical therapy visits, was discharged from physical therapy for non-compliance, and quit wearing the knee brace Dr. Verma ordered for him after nine days. (SOF ¶¶ 24-26). Plaintiff's own actions, not the actions of Dr. James, are the reason for any suboptimal surgical outcome. *Id*. Regardless, between his first surgery and second surgery, Plaintiff had 90º of knee flexion which would allow him to

perform all activities of daily living without pain. (SOF ¶ 32). Following his second surgery, Plaintiff maintained 120º of flexion which would not restrict activities of any kind. *Id.*

Plaintiff cannot establish he suffered harm as the result of the perceived delay in receiving an MRI. Without a showing of a causal connection to the alleged harm, Plaintiff's argument fails as a matter of law and his claims pursuant to both § 1983 and state law medical malpractice should not survive summary judgment.

4. Plaintiff's Claim for Punitive Damages Fails

Finally, Plaintiff's claim for punitive damages fails. Plaintiff has not proven any set of facts that would allow him to recover punitive damages. As a threshold matter, Plaintiff is barred from seeking punitive damages for Dr. James' alleged medical malpractice. 735 ILCS 5/2-1115. Punitive damages may be awarded under §1983 only "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Schaub v. VonWold*, 638 F.3d 905, 922-23 (8th Cir. 2011).

Here, it is undisputed that Plaintiff received frequent medical care from Dr. James. Even if this Court determines that there is a genuine issue of material fact as it relates to Plaintiff's care, Plaintiff has not put forth any evidence suggesting that Dr. James acted with the level of evil motive or intent required for Plaintiff to recover punitive damages. Thus, even if this Court finds against either Dr. James or Wexford as it relates to Plaintiff's deliberate indifference claim, it should still grant summary judgment on Plaintiff's punitive damages claim.

CONCLUSION

WHEREFORE, Defendants, WEXFORD HEALTH SOURCES, INC. and DR. MARSHALL JAMES pray that this honorable Court enter an Order granting Summary

Judgment in their favor, dismissing the case with prejudice against Plaintiff, awarding fees and costs and for any other relief deemed just.

Respectfully submitted,

WEXFORD HEALTH SOURCES, INC. and DR. MARSHALL JAMES

By: /s/ Sandra L. Byrd

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020 I electronically filed the foregoing document with the clerk of the court for Northern District of Illinois, Eastern Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of E-Filing" to the attorneys of record in this case.

/s/ Sandra L. Byrd

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