5-17-2022

Lorenzo Nichols v. Jeri Smock

BLD-110 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 22-1092

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LORENZO NICHOLS,
Appellant

v.

JERI SMOCK, Correctional Health Care Administrator; PA STROUP; DR. LETIZIO

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 1:19-cv-00164)
District Judge: Honorable Susan Paradise Baxter

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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 24, 2022

Before: MCKEE, GREENAWAY, JR., and PORTER, Circuit Judges

(Opinion filed: May 17, 2022)

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OPINION*

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PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Lorenzo Nichols, an inmate at State Correctional Institution – Albion ("SCI Albion") proceeding pro se and in forma pauperis, appeals from the District Court's orders granting defendants' motions to dismiss and for summary judgment. For the reasons that follow, we will summarily affirm.

I.

In 2019, Nichols filed a civil rights action in the United States District Court for the Western District of Pennsylvania against defendants, alleging violations of the Eighth Amendment for failing to adequately diagnose and treat his diabetes. Specifically, Nichols alleged as follows: on May 8, 2018, he went to the prison medical department complaining of fatigue, tiredness, dry mouth, frequent urination, and weight loss, and was treated by Daniel Stroup, a physician's assistant. Nichols told Stroup that others in the prison suspected that he might have diabetes, and Stroup indicated that he would order bloodwork to check for diabetes. Stroup also treated Nichols for a minor ear infection and cold that day. A week later, on May 15, 2018, Dr. Anthony Letizio called Nichols to the medical department to follow up on staff reports concerning his rapid weight loss. Letizio told Nichols that bloodwork had not yet been ordered but that he would order it. Nichols requested that Letizio perform a "finger prick" blood glucose test that day, but Letizio refused. Two days later, on May 17, 2018, Nichols returned to the medical department with the same concerns, and two nurses took urine and blood glucose tests, both of which indicated a high glucose level. Nichols was sent to an offsite hospital for further treatment related to severe diabetic ketoacidosis. When he was released from the

hospital, Nichols filed a grievance concerning his medical care. Nichols contended that, in responding to his grievance, Correctional Health Care Administrator Jeri Smock misconstrued the facts to place the blame on Nichols and make him look like a liar. See Am. Compl., District Ct. ECF No. 41.

Smock filed a motion to dismiss for failure to state a claim. The matter was referred to a Magistrate Judge, who recommended that the motion be granted because Smock could not be considered deliberately indifferent simply because of her handling of Nichols's complaints or on a theory of respondeat superior. Over Nichols's objections, the District Court adopted the Magistrate Judge's Report and Recommendation and granted the motion to dismiss the claims involving Smock.

Stroup and Letizio subsequently filed a motion for summary judgment. The Magistrate Judge found that neither Stroup nor Letizio acted with deliberate indifference and recommended that the motion be granted. Over Nichols's objections, the District Court adopted the Magistrate Judge's Report and Recommendation and granted the motion for summary judgment. Nichols timely appealed.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and review the grant of a motion to dismiss under Rule 12(b)(6) de novo. See Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 151 (3d Cir. 2018). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is

plausible on its face." Santiago v. Warminster Twp., 629 F.3d 121, 128 (3d Cir. 2010) (citations and quotation marks omitted).

We also review the grant of a motion for summary judgment de novo. Dondero v. Lower Milford Twp., 5 F.4th 355, 358 (3d Cir. 2021). Summary judgment is appropriate "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 genuine dispute of material fact exists if the evidence is sufficient for a reasonable factfinder to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). We may summarily affirm if the appeal fails to present a substantial question. See 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

III.

To succeed on an Eighth Amendment claim for inadequate medical care, "a plaintiff must make (1) a subjective showing that the defendants were deliberately indifferent to his or her medical needs and (2) an objective showing that those needs were serious."[1] Pearson v. Prison Health Serv., 850 F.3d 526, 534 (3d Cir. 2017) (cleaned up). "To act with deliberate indifference to serious medical needs is to recklessly disregard a substantial risk of serious harm." Giles v. Kearney, 571 F.3d 318, 330 (3d Cir. 2009).

[1] It is undisputed that Nichols alleged a serious medical need related to his diabetes diagnosis. See Atkinson v. Taylor, 316 F.3d 257, 266 (3d Cir. 2003) (explaining that a medical need is serious "if it has been diagnosed by a physician as requiring treatment").

"[W]hen medical care is provided, we presume that the treatment of a prisoner is proper absent evidence that it violates professional standards of care." Pearson, 850 F.3d at 535.

The District Court properly dismissed the action against Smock. Nichols alleged that Smock mishandled the grievance process but did not allege that she personally played any role in treating or diagnosing his condition. Defendants in civil rights actions "must have personal involvement in the alleged wrongs to be liable and cannot be held responsible for a constitutional violation which he or she neither participated in nor approved." Baraka v. McGreevey, 481 F.3d 187, 210 (3d Cir. 2007) (quotation marks and citations omitted). Moreover, as a non-medical prison official, Smock was not chargeable with deliberate indifference "absent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner." Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004). The allegations in Nichols's complaint do not suggest that Smock had any reason to believe that Nichols was being mistreated or not treated, especially considering that he was evaluated at the medical department several times.

The District Court also properly granted summary judgment in favor of Stroup and Letizio because the record does not suggest that they acted with deliberate indifference. Nichols was seen at the medical department on multiple occasions after first reporting his symptoms, both at his own request and at the request of prison staff, and he received treatment for an ear infection and a cold. Both Stroup and Letizio planned to order bloodwork to test for diabetes, but the tests were not completed in the approximately ten

days between Nichols's first visit to the medical department and his transfer to the hospital. Even if the delay in conducting bloodwork suggested negligence (an issue we do not decide), medical negligence does not rise to the level of a constitutional violation. See Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).[2]

IV.

Accordingly, we will affirm the judgments of the District Court. See 3d Cir. LAR 27.4; I.O.P. 10.6. Nichols's motion for appointment of counsel is denied.

[2] Nichols argues that the District Court abused its discretion by considering unauthenticated medical records when ruling on the motion for summary judgment. "Facts supporting summary judgment must be capable of being presented in a form that would be admissible in evidence." Bacon v. Avis Budget Grp., Inc., 959 F.3d 590, 603 (3d Cir. 2020) (cleaned up); Fed. R. Civ. P. 56(c)(2). The medical records were capable of being presented in a form that would be admissible in evidence. The fact that the medical records were produced by the Department of Corrections in response to a subpoena is indicative of authentication, and the contents, appearance, and substance of the records support that they are what Stroup and Letizio purport them to be. Fed. R. Evid. 901(b)(4). Accordingly, this argument lacks merit.