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**DONALD RAY JENNINGS, Plaintiff-Appellant, v. AHMAD S. AL-DABAGH, M.D.,
Defendant-Appellee.**

No. 03-2046

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

97 Fed. Appx. 548; 2004 U.S. App. LEXIS 8688

April 29, 2004, Filed

NOTICE: [**1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

PRIOR HISTORY: Eastern District of Michigan. 01-10176. Lawson. 07-31-03. *Jennings v. Al-Dabagh*, 275 F. Supp. 2d 863, 2003 U.S. Dist. LEXIS 13935 (E.D. Mich., 2003)

DISPOSITION: Motion for counsel denied, District court's judgment affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner inmate moved for counsel and appealed the decision entered by the United States District Court for the Eastern District of Michigan granting summary judgment to defendant prison doctor in his civil rights action filed under 42 U.S.C.S. § 1983 alleging a violation of the Eighth Amendment on the basis that the doctor was deliberately indifferent to the inmate's serious medical needs.

OVERVIEW: The inmate brought his action against the doctor alleging that the doctor was deliberately indifferent to the inmate's toenail fungus. The district court granted the doctor's motion for summary judgment and denied the inmate's motions for relief under to Fed. R. Civ. P. 59(e), 60(b). On appeal, the court affirmed. Although the inmate claimed that his constitutional rights were violated when the doctor refused to properly treat his foot infection, the inmate failed to come forward with any evidence that the failure to treat the infection could have led to severe consequences, such as a systemic infection, amputation of a limb, or even death. Therefore,

any delay in treating the inmate's infection did not amount to the deprivation of treatment for a "serious" medical condition within the meaning of the Eighth Amendment. Moreover, there was no evidence suggesting that the doctor at any time deliberately ignored the inmate's medical needs with the intent to inflict pain or prolong any suffering. The medical care the inmate received from the doctor constituted at worst substandard medical care, not deliberate indifference to the inmate's serious medical needs.

OUTCOME: The court denied the motion for counsel and affirmed the district court's judgment.

LexisNexis(R) Headnotes

Civil Procedure > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

[HN1] The court of appeals reviews an order granting summary judgment de novo.

Civil Procedure > Discovery > Methods > General Overview

Civil Procedure > Summary Judgment > Standards > Genuine Disputes

Civil Procedure > Summary Judgment > Standards > Materiality

[HN2] Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c).

Civil Rights Law > Prisoner Rights > Medical Treatment

Criminal Law & Procedure > Sentencing > Cruel & Unusual Punishment

Healthcare Law > Treatment > Failures & Refusals to Treat > General Overview

[HN3] In order to establish an inadequate medical care claim in violation of the Eighth Amendment, a prisoner must demonstrate that the defendant acted, or failed to act, with deliberate indifference to serious medical needs. Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. Consequently, allegations of medical malpractice or negligent diagnosis and treatment fail to state an Eighth Amendment claim of cruel and unusual punishment.

Civil Rights Law > Prisoner Rights > Medical Treatment

Criminal Law & Procedure > Postconviction Proceedings > Imprisonment

Healthcare Law > Actions Against Facilities > General Overview

[HN4] Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law.

Civil Rights Law > Prisoner Rights > Medical Treatment

Criminal Law & Procedure > Postconviction Proceedings > Imprisonment

[HN5] In order to show a constitutional violation based on an alleged delay in treatment, the prisoner must place verifying medical evidence in the record establishing the detrimental effect of the delay.

COUNSEL: DONALD RAY JENNINGS, Plaintiff - Appellant, Pro se, Kincheloe, MI.

For AHMAD S. AL-DABAGH, Defendant - Appellee: Kimberley A. Koester, Chapman & Associates, Ronald W. Chapman, Bloomfield Hills, MI.

JUDGES: Before: COLE and COOK, Circuit Judges; SPIEGEL, District Judge. *

* The Honorable S. Arthur Spiegel, United States District Judge for the Southern District of Ohio, sitting by designation.

OPINION:

[*549] ORDER

Donald Ray Jennings, a Michigan prisoner proceeding pro se, moves for counsel and appeals the

summary judgment for the defendant in this civil rights action filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to *Rule 34(j)(1), Rules of the Sixth* [**2] *Circuit*. Upon examination, this panel unanimously agrees that oral argument is not needed. *Fed. R. App. P. 34(a)*.

Jennings is currently a prisoner confined at the Kinross Correctional Facility in Kincheloe, Michigan. The incident giving rise to this lawsuit took place while Jennings was incarcerated at the Saginaw Correctional Facility in Freeland, Michigan. Jennings filed this civil rights action against a prison doctor (Ahmad S. Al-Dabagh) alleging a violation of the *Eighth Amendment* on the basis that the defendant was deliberately indifferent to his serious medical needs. The entire statement of facts underlying his claim for relief is as follows:

On 11-24-00 I sent a kite to Medical to get Toenail Fungus treated, for my foot has burning, itching [sic] and cracks that bleed every now and then. R.N. G. Green # 35057 made an appointment for the M.D. on 12-1-00 and 12-7-00. R.N. J. Weippert # 10540 was told by me that my foot is bad and needs to be taken care of, Dr. Aldabagh acknowledged my toenail fungus and refused to treat. This was on 12-7-00. On 1-2-01 R.N. D. Doerr # 10542 was told about my foot needing attention. 1-2-01 Dr. Aldabagh [**3] [sic] still refused to treat even after I told him it burn's, [sic] itches, and skin cracks between my toes and bleeds O.T.C. does not work in here.

Summary judgment was ultimately granted in favor of the defendant. Jennings's motion to alter or amend the judgment pursuant to *Fed. R. Civ. P. 59(e) and 60(b)*, and his motion to stay the judgment pending appeal were denied in an order filed October 9, 2003. This appeal followed.

[HN1] We review an order granting summary judgment de novo. *Holloway v. Brush*, 220 F.3d 767, 772 (6th Cir. 2000). [HN2] Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Fed. R. Civ. P. 56(c)*.

Upon review, we conclude that the district court properly granted summary judgment to the defendant for the reasons stated by that court. [HN3] In order to establish an inadequate medical care claim in violation of the [**4] *Eighth Amendment*, a prisoner must demonstrate that the defendant acted, or failed to act, with "deliberate indifference to serious medical needs."

Farmer v. Brennan, 511 U.S. 825, 835, 128 L. Ed. 2d 811, 114 S. Ct. 1970 (1994) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976)). Deliberate indifference is the reckless disregard of a substantial risk of serious harm; mere negligence will not suffice. *Farmer*, 511 U.S. at 835-36. Consequently, allegations [*550] of medical malpractice or negligent diagnosis and treatment fail to state an *Eighth Amendment* claim of cruel and unusual punishment. *Estelle*, 429 U.S. at 106. [HN4] "Where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). [HN5] In order to show a constitutional violation based on an alleged delay in treatment, the prisoner must place verifying medical evidence in the record establishing the detrimental effect of the delay. [**5] *Napier v. Madison County, Ky.*, 238 F.3d 739, 742 (6th Cir. 2001) (affirming grant of summary judgment to the defendants).

Although Jennings claimed that his constitutional rights were violated when the defendant refused to properly treat his foot infection, Jennings failed to come

forward with any evidence that the failure to treat this infection could have lead to severe consequences, such as a systemic infection, amputation of a limb, or even death. *See Napier*, 238 F.3d at 742. Therefore, any delay in treating Jennings's infection did not amount to the deprivation of treatment for a "serious" medical condition within the meaning of the *Eighth Amendment*. Moreover, there is no evidence suggesting that the defendant at any time deliberately ignored Jennings's medical needs with the intent to inflict pain or prolong any suffering. *See Farmer*, 511 U.S. at 837-47. The medical care Jennings received from the defendant constituted at worst substandard medical care, not deliberate indifference to Jennings's serious medical needs. Jennings's personal opinion that his care was substandard, or that he was not given the treatment he requested [**6] because of the costs associated with the treatment, raises claims of state-law medical malpractice, not constitutionally defective medical care indifferent to Jennings's serious medical needs. *See Westlake*, 537 F.2d at 860-61.

Accordingly, the motion for counsel is denied, and the district court's judgment is affirmed. *Rule 34(j)(2)(C)*, *Rules of the Sixth Circuit*.