

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARVIN HOLMES)	
)	
Plaintiff,)	
v.)	
)	
DELAWARE DEPARTMENT OF)	C.A. No. N14C-09-040 MMJ
CORRECTION,)	
)	
Defendant.)	

Submitted: April 30, 2015
Decided: July 9, 2015

Upon Plaintiff's Motion for Default Judgment
DENIED

MEMORANDUM OPINION

Marvin Holmes, *Pro Se*.

Ophelia Waters, Esquire, Department of Justice, Wilmington, Delaware, Attorney
for the State.

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

On July 31, 2012, Plaintiff Marvin Holmes was arrested for violating the terms of his probation. On August 9, 2012, Holmes was sentenced to Level IV Plummer Center, followed by a period of Level III probation. In September 2012, Holmes informed a nurse at the Plummer Center that he had a blood disorder and requested that his blood be drawn. The nurse refused Holmes' request because he was not displaying any symptoms and there was no indication of a blood disorder in his medical file.

On February 25, 2013, Holmes was arrested again for violating the terms of his probation. Holmes was held without bail at Howard R. Young Correctional Institution ("HRYCI") until the violation hearing. On February 26, 2013, Holmes informed the medical staff at HRYCI that he had a blood disorder. The nurse refused to draw his blood because she did not have the authorization to do so and there was no note in his file mentioning a blood disorder. On June 19, 2014, while still incarcerated at HRYCI, Holmes collapsed and lost consciousness. He was taken to St. Francis Hospital, where he received blood transfusions. Holmes was diagnosed with Multiple Myeloma Cancer.

On September 10, 2014, Holmes filed a Complaint against Delaware Department of Correction ("DOC"). Holmes claims that DOC's failure to draw his blood resulted in his blood disorder being left untreated and progressing to stage

three Multiple Myeloma Cancer. The Attorney General's Office was served with the Complaint on September 24, 2014. DOC was served with the Complaint on September 25, 2014.

On March 25, 2015, Holmes filed a Motion for Default Judgment. Holmes asserted that DOC was served in September 2014 and failed to file an answer within the twenty-day time period. On April 8, 2015, the Court sent a letter to the State, requiring it to file a response to the Complaint. On April 30, 2015, the State filed DOC Opposition to Entry of Default Judgment, claiming that the Motion for Default Judgment should be denied because the State had filed a Motion to Dismiss in *Holmes v. Prothonotary, Superior Court, N.C.C.* ("Prothonotary Case").¹ The State argues that the Prothonotary Case and this case allege the same operative facts and injury, such that the State's Motion to Dismiss filed in the Prothonotary Case relieves the State from the entry of default judgment in this case. Further, the State argues that Holmes' claim against DOC is barred by the doctrine of sovereign immunity.

STANDARD OF REVIEW

Default Judgment

Superior Court Rule Civil 55(b) provides in pertinent part: "[W]hen a party against whom a judgment for affirmative relief is sought, has failed to appear,

¹ *Holmes v. Prothonotary, Superior Court, N.C.C.*, 2015 WL 3648001 (Del. Super.).

plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered”² In analyzing Rule 55(b), this Court has held that “[t]here is no hard and fast rule that the filing of an entry of appearance or an untimely answer renders default judgment unavailable.”³ After an entry of appearance or an untimely answer is filed, a motion for default judgment still may be granted in the Court’s discretion.⁴ However, the preference of Delaware courts is to decide cases on their merits.⁵ Therefore, any reasonable doubt should be resolved in favor of the party opposing the default judgment.⁶

ANALYSIS

Default Judgment

In the present case, Holmes properly filed a Motion for Default Judgment because DOC failed to file a timely response to the Complaint. The State’s motion opposing default judgment is based on a faulty legal premise. This case and the Prothonotary Case are two separate cases and no motion for joinder has been filed. Therefore, the State’s Motion to Dismiss in the Prothonotary Case is not applicable in this case.

² Super. Ct. Civ. R. 55(b).

³ *Pinkett ex rel. Britt v. Nationwide Mut. Ins. Co.*, 832 A.2d 747, 750 (Del. Super. 2003).

⁴ *Id.*

⁵ *Marvel v. Prison Industries*, 2006 WL 2242750, at *1 (Del. Super.).

⁶ *Id.*; see also *Old Guard Ins. Co. v. Jimmy’s Grille, Inc.*, 2004 WL 2154286, at *3 (Del.) (TABLE).

However, the State now has entered its belated appearance. The Court exercises its discretion and declines to enter default judgment against DOC.

Sovereign Immunity

The doctrine of sovereign immunity provides that the State cannot be sued without its consent.⁷ Sovereign immunity may be waived only by an express act of the General Assembly.⁸ Section 6511 of Title 18 of the Delaware Code provides: “The defense of sovereignty is waived and cannot and will not be asserted as to any risk or loss covered by the state insurance coverage program”⁹

If the State has waived sovereign immunity, liability still may be limited by the Delaware Tort Claims Act.¹⁰ The Delaware Tort Claims Act provides State employees with qualified immunity from civil liability.¹¹ Qualified immunity will apply where: “(1) the alleged act or failure to act arises out of and in connection with the performance of official duties involving the exercise of discretion; (2) the act or failure to act was done (or not done) in good faith; and (3) the act or failure to act was done without gross negligence.”¹²

Holmes has not pointed to any insurance policy or legislative act that would allow such a suit against the DOC. Further, Debra Lawhead, Insurance Coverage

⁷ *Power v. State*, 1996 WL 945012, at *3 (Del. Super.).

⁸ *Doe v. Cates*, 499 A.2d 1175, 1176 (Del. 1985).

⁹ 18 *Del. C.* § 6511.

¹⁰ *Parker v. Wireman*, 2012 WL 1536934, at *1 (Del. Super.).

¹¹ 10 *Del. C.* § 4011(c).

¹² *J.L. v. Barnes*, 33 A.3d 902, 914 (Del. Super. 2011).

Administrator of the State of Delaware, has sworn in an affidavit that the State has not purchased any insurance or established any self-insurance program that would apply to the claims set forth in the Complaint.

Holmes is suing the Delaware Department of Correction. Holmes claims that DOC's refusal to honor his request to draw his blood resulted in the progression of his blood disorder to stage three Multiple Myeloma Cancer. Although Holmes has not pled his case in Constitutional terms, the United States Supreme Court has held that the Eighth Amendment requires that prisoners receive adequate medical care.¹³ However, that holding does not give a prisoner the "right to choose a specific form of medical treatment, so long as the treatment provided is reasonable."¹⁴ Further, "an inmate's disagreement with prison health care providers over the proper course of treatment does not rise to the level of a constitutional violation."¹⁵

For Holmes to succeed with a Constitutional claim of deliberate indifference, he must show: (1) from an objective standpoint, his medical need is sufficiently serious;¹⁶ and (2) the [DOC] official had the culpable state of mind of "deliberate indifference" towards the plaintiff's health.¹⁷ A medical need is

¹³ *Estelle v. Gamble*, 729 U.S. 97 (1976).

¹⁴ *Blackston v. Correctional Medical Services, Inc.*, 499 F. Supp. 2d. 601, 605 (D.Del. 2007).

¹⁵ *Id.*

¹⁶ *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).

¹⁷ *Farmer*, 511 U.S. at 834; *Wilson*, 501 U.S. at 297.

sufficiently serious if a physician diagnoses it as requiring treatment, or the injury is so obvious that a layperson could identify it as requiring medical attention.¹⁸

“Deliberate indifference” requires that a prison official must “both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”¹⁹ Choosing a treatment plan other than what has been requested by an inmate, however, does not amount to deliberate indifference, provided that the treatment plan is reasonable.²⁰

In the instant case, Holmes did not present with any signs or symptoms of a blood disorder, nor did his medical chart indicate any such issue. At this stage, questions of fact exist as to whether the refusal of DOC medical staff to draw Holmes’ blood was unreasonable, and whether the DOC acted with deliberate indifference.²¹

¹⁸ *Hyson v. Correctional Med. Serv. ’s*, 2004 WL 769362, at *3 (D. Del.); *Monmouth County Correctional Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987).

¹⁹ *Farmer*, 511 U.S. at 837.

²⁰ *Diaz v. Carroll*, 570 F.Supp.2d 571, 578 (D. Del. 2008) (citing *Harrison v. Barkley*, 219 F.3d 132, 138-40 (2d Cir. 2000)); *see also Stilner v. Rhay*, 371 F.3d 420, 421 (9th Cir. 1967) (Prison officials have “wide discretion” in providing medical treatment to inmates.).

²¹ *See Deputy v. Conlan*, 2013 WL 4040790, at *1-2 (Del. Super.).

CONCLUSION

Defendant has appeared in this case. Significant questions of fact and law weigh against a finding for Plaintiff at this stage of the proceedings.

THEREFORE, Defendant's Motion for Default Judgment is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston