IN THE COURT OF APPEALS OF IOWA

No. 1-415 / 10-1125
Filed July 13, 2011

BENJAMIN E. SCHREIBER,
Plaintiff-Appellant,

vs.

IOWA DEPARTMENT OF CORRECTIONS, et al.,
Defendants-Appellees.

Appeal from the Iowa District Court for Lee (North) County, John G. Linn, Judge.

Benjamin Schreiber appeals from the district court's ruling dismissing his various challenges to the conditions of his confinement. **AFFIRMED.**

Benjamin Schreiber, Fort Madison, pro se.

Thomas J. Miller, Attorney General, and Forrest Guddall, Assistant Attorney General, for appellees.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

On petition for judicial review, Benjamin Schreiber appeals from the district court's ruling dismissing his various pro se challenges to the conditions of his confinement. Schreiber raises a myriad of claims concerning his prison diet and contends "the nature of a diet being forced upon him" by the Iowa Department of Corrections (DOC) is a violation of DOC policy, Iowa State Penitentiary policy, his civil rights under the United States and Iowa constitutions, and is a form of cruel and unusual punishment. Essentially, Schreiber argues he should be allowed to refuse his medically prescribed diabetic diet, which he alleges is an optional medical treatment.

We have carefully and thoroughly reviewed the arguments submitted by Schreiber, and the record in its entirety. Under the facts and circumstances of this case, we cannot find the district court erred in dismissing Schreiber's claims. *Crall v. Davis,* 714 N.W.2d 616, 619 (Iowa 2006) (observing a motion to dismiss is reviewed for correction of errors at law). The court correctly concluded that Schreiber has failed to state a claim upon which relief may be granted.

Although our supreme court has not squarely addressed the arguments raised by Schreiber in regard to a prisoner's rights to prescribe his own medical diet or course of treatment, the Eighth Circuit Court of Appeals has previously determined prisoners are not entitled to substitute medical treatment plans due to "mere disagreement" with the course of treatment, *see Smith v. Marcantonio*, 910 F.2d 500, 502 (8th Cir. 1990), and that a prison official does not violate a prisoner's constitutional rights by, in the exercise of professional judgment, a

refusal to implement the prisoner's suggested course of treatment, *see Long v. Nix*, 86 F.3d 761, 765 (8th Cir. 1996). "Prisoners do not have a constitutional right to any particular type of treatment." *Long*, 86 F.3d at 765. But a violation of a prisoner's rights may be found where prison officials "intentionally deny or delay access to medical care or intentionally interfere with prescribed treatment, or by prison doctors who fail to respond to prisoner's serious medical needs." *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997). However, neither of those findings is supported by Schreiber's arguments or the record in this case.

Schreiber also argues he is entitled to refuse treatment pursuant to DOC health services policy #305, which allows prisoners to "elect to refuse recommended or prescribed health service procedures, treatments, medication(s), or advice of health professionals." However, DOC health services policy #801 mandates a diabetic diet for diabetic prisoners, even if the prisoner has signed a #305 treatment refusal form. Schreiber does not dispute the fact he is diabetic, and we therefore find no violation of DOC policy by prison officials requiring Schreiber to maintain a diabetic diet.

In regard to Schreiber's remaining claims, we further agree with the district court that he has failed to state a claim upon which relief may be granted. *See* Iowa Code 17A.19(10)(a)-(n) (2009) (requiring a showing that plaintiff's "substantial rights" have been "prejudiced" by the department's action); *Walters v. Kautzky*, 680 N.W.2d 1, 5 (Iowa 2004) (reiterating plaintiff must "show actual injury in order to successfully assert a denial of access to the courts"); *Iowa Bankers Ass'n v. Iowa Credit Union Dept.*, 335 N.W.2d 439, 443 (Iowa 1983)

(observing plaintiff fails to state a claim upon which relief can be granted without a showing plaintiff has been "aggrieved or adversely affected"; a subjective disagreement with a department policy is not sufficient).

Finding no error, we affirm the ruling of the district court.

AFFIRMED.