BLD-120 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 21-3033

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CHAD ALLEN SASSE,
Appellant

v.

JOHN E. WETZEL; BARRY R. SMITH; DORETTA CHENCHARICK;
REBECCA REIFER; THERESA CANTOLINA, R.N.;
JANET PEARSON, R.N.; MUHAMMAD NAJI; PATRICK NAGLE, M.A.;
CASEY JAMES; MARGARET BARNES, C.R.N.P.;
CORRECT CARE SOLUTIONS LLC, individually and in their official capacities

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 3:19-cv-00130)
District Judge: Honorable Stephanie L. Haines

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Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
April 7, 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.

Chad Sasse, an inmate at State Correctional Institution – Houtzdale ("SCI Houtzdale") proceeding pro se, appeals from the District Court's order dismissing his amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, we will summarily affirm.

I.

In August 2019, Sasse filed a civil rights action in the United States District Court for the Western District of Pennsylvania against defendants,[1] alleging violations of the Eighth and Fourteenth Amendments related to his medical care. In his third amended complaint (which is the operative pleading), Sasse alleged that he has "severe gluten sensitive enteropathy," or celiac disease, and defendants failed to take the steps necessary to diagnose and treat his condition over the course of several years, thereby displaying deliberate indifference to his serious medical needs.

The corrections defendants and the medical defendants both filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The matter was referred to a Magistrate Judge, who recommended that the motions be granted, concluding that Sasse failed to

[1] Specifically, Sasse named as defendants various corrections officials, including former Pennsylvania Secretary of Corrections John Wetzel; SCI Houtzdale Superintendent Barry Smith; and former and current SCI Houtzdale grievance coordinators Doretta Chencharick and Rebecca Reifer; and Medical Directors/nurses Theresa Cantolina and Janet Pearson (collectively, "corrections defendants"). Also named as defendants were private contractual healthcare provider Correct Care Solutions and its employees, Muhammad Naji, Patrick Nagle, Casey (formerly Thornley) James, and Margaret Barnes (collectively, "medical defendants"). Sasse sued all defendants in their individual and official capacities under 42 U.S.C. § 1983.

allege sufficient facts to support a cognizable legal claim. Over Sasse's objections, the District Court adopted the Magistrate Judge's Report and Recommendation and granted the motions to dismiss. Sasse timely appealed.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and review the District Court's 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). As a pro se litigant, Sasse is entitled to liberal construction of his complaint. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). 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.

Prison officials "violate the Eighth Amendment when they act deliberately indifferent to a prisoner's serious medical needs by intentionally denying or delaying access to medical care or interfering with the treatment once prescribed." Pearson v. Prison Health Serv., 850 F.3d 526, 534 (3d Cir. 2017) (quotation marks and citation omitted). "We have found 'deliberate indifference' in a variety of circumstances, including where the prison official (1) knows of a prisoner's need for medical treatment

but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999).

First, the District Court properly dismissed Sasse's claims against the corrections defendants. 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). "Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

As the District Court explained, Sasse's allegations concerning the corrections defendants largely involve their handling of the grievance process. He does not adequately allege that they were personally involved in his medical care or had any other personal involvement in the alleged unconstitutional failures to adequately diagnose and treat his medical condition. See Rode, 845 F.2d at 1207-08. Moreover, as non-medical prison officials, Wetzel, Smith, Chencharick, and Reifer were 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). There is no evidence to suggest that these defendants had any reason to believe that the medical team was mistreating or not treating Sasse,

especially considering the evidence that Sasse received multiple blood tests, medications, and vitamins aimed at treating his condition.[2]

The District Court also properly dismissed Sasse's claims against medical defendants Naji, Nagle, James, Barnes, and Correct Care Solutions. "[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. Mere allegations of medical malpractice or disagreement as to the proper medical treatment are insufficient to support an Eighth Amendment claim. Monmouth Cnty. Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987).

The record shows that the medical staff[3] exercised professional judgment in treating Sasse's condition, and there is nothing to suggest that his treatment violated professional standards of care. Sasse's contentions that he should have been provided a gluten-free diet, access to a gastroenterologist, and an endoscopic intestinal biopsy constitute a mere disagreement as to the proper medical treatment, particularly considering that his medical records showed no allergy to gluten that would necessitate his preferred course of treatment.

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[2] Sasse also alleges that Medical Director Pearson told Sasse, "You should be ashamed that concerned family is calling here for you." However, Sasse has not provided context for this statement or any analysis to explain how it contributed to the violation of his constitutional rights. This cursory allegation is inadequate to demonstrate personal involvement.

[3] This analysis also applies to Medical Directors Pearson and Cantolina to the extent that they can be considered medical providers because of their training as nurses.

Regarding Correct Care Solutions, Sasse failed to allege any specific policy or custom that violated federal laws, beyond a vague reference to "policies that allow those employees to give cursory exams for something as serious as bloody stools during periods of gluten consumption." This was inadequate to state a claim against Correct Care Solutions. See Palakovic v. Wetzel, 854 F.3d 209, 232 (3d Cir. 2017) (explaining that, "[t]o state a claim against a private corporation providing medical services under contract with a state prison system, a plaintiff must allege a policy or custom that resulted in the alleged constitutional violations at issue").

IV.

Accordingly, we will affirm the judgment of the District Court. See 3d Cir. LAR 27.4; I.O.P. 10.6. Sasse's motion to proceed in forma pauperis is granted for the purpose of considering appointment of counsel, see Gibbs v. Ryan, 160 F.3d 160, 161 n. 1 (3d Cir. 1998), but his motion for appointment of counsel is denied, see 28 U.S.C. § 3006A(a)(2)(B).