

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

VERNON K. CAPSHAW  
ADC #144481

PLAINTIFF

v.

No. 5:16-cv-121-DPM

J. STIEVE, Doctor; L. GRISWOLD,  
APN; E. BLAND, APN;  
and C. CAPPS, APN

DEFENDANTS

ORDER

Opposed recommendation, *No 69*, adopted as modified. FED. R. CIV. P. 72(b)(3). The modification: The day after Magistrate Judge Volpe entered his recommendation, the Court received Capshaw's response to the motion for summary judgment. *No 70*. The Court has therefore considered that paper, taken it as an objection too, and reviewed the recommendation *de novo*. What pain medicine Capshaw needs for his foot is a medical judgment. Taking the record in the light most favorable to him, the doctor and nurse practitioners thought non-opioids would work; they didn't; and the opioid was restored after suit was filed. This was, at most, negligence, not deliberate indifference. The motion for summary judgment, *No 62*, is granted. Capshaw's complaint will be dismissed with prejudice. Capshaw's motions for appointed counsel

and a status update, Nos 71 & 72, are denied as moot.

So Ordered.

*D.P. Marshall Jr.*

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D.P. Marshall Jr.  
United States District Judge

*23 February 2017*

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