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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 Rachel Simmons,

No. 1:15-cv-00818-JAM-EPG

12 Plaintiff,

13 v.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**14 Correctional Officer
15 Rodriguez, et al.,

16 Defendants.

17 Plaintiff Rachel Simmons' husband Armando Simmons ("Mr.
18 Simmons") died of a drug overdose after being taken from Avenal
19 State Prison to the hospital. Following Mr. Simmons' death,
20 Plaintiff sued Correctional Officers Rodriguez and Hall
21 ("Defendants"). ECF Nos. 1, 26. Defendants move for summary
22 judgment, ECF No. 35, which Plaintiff opposes, ECF No. 45.¹

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I. FACTS

25 Mr. Simmons was in custody at Avenal State Prison on May 30,

26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for April 18, 2017.

1 2013. Pl.'s Resp. to Defs. Statement of Undisputed Facts ("UF")
2 ## 1, ECF No. 45-1. Defendant Rodriguez noticed Mr. Simmons
3 pacing around in his cell naked. UF #5. Rodriguez asked
4 Defendant Hall to assist him. UF #6. Rodriguez and Hall opened
5 Mr. Simmons' cell door and Mr. Simmons slid to the ground. UF
6 #8. Rodriguez and Hall lifted Mr. Simmons up and helped him walk
7 to the medical cell. Id.

8 In the medical cell, the nurse could not take Mr. Simmons'
9 vital signs because he would not stay still. UF #13. Sergeant
10 Ruis, Rodriguez and Hall's supervisor, called for an emergency
11 vehicle. UF ##11, 15. The emergency vehicle arrived about
12 twenty minutes later and took Mr. Simmons to the prison's medical
13 center. UF ##17, 18. The doctors at the medical facility could
14 not take Mr. Simmons' vitals. UF #21. The medical staff called
15 for an ambulance to take Mr. Simmons to the hospital. UF #22.
16 The ambulance took Mr. Simmons to Coalinga Regional Medical
17 Center, where he died of a methamphetamine overdose. UF #23.

18 Plaintiff brings three causes of action in her amended
19 complaint. First Amended Complaint ("FAC") at 6-9. Both the
20 first and second claims are labeled as "Violation of the Eighth
21 Amendment..." claims under 42 U.S.C. § 1983. Id. at 5, 7. The
22 Court cannot discern a legal distinction between these two
23 claims, and therefore treats the first and second claims as one
24 claim for deliberate indifference to serious medical needs
25 brought as a survival action on behalf of Mr. Simmons. Plaintiff
26 also brings a third claim for loss of spousal relationship under
27 the due process clause of the Fourteenth Amendment. FAC at 8.

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1 II. OPINION

2 A. Evidentiary Objections

3 Defendants object to the declaration of Tyrone Evans, ECF
4 No. 45-4, attached to Plaintiff's opposition brief. Defs.' Obj.
5 to Pl.'s Evid. ("Defs.' Obj.") at 1, ECF No. 47. Defendants'
6 attorney states that Plaintiff "has never served any disclosures
7 under Rule 26(a)(1) in this case." Allin Decl. ¶ 6, ECF No. 35-
8 3.

9 A "party [who] fails to provide information or identify a
10 witness as required by Rule 26(a) or (e), [cannot] use that
11 information or witness to supply evidence on a motion, at a
12 hearing, or at a trial, unless the failure was substantially
13 justified or is harmless." Fed. R. Civ. P. 37(c)(1). Plaintiff
14 did not disclose Tyrone Evans as a witness and has not provided
15 a justification for that failure. The Court therefore sustains
16 Defendants' objection and will not consider Mr. Evans'
17 declaration in deciding Defendants' motion for summary judgment.

18 Defendants also object to two sentences in the coroner's
19 report attached as Exhibit A to Plaintiff's opposition brief.
20 Defs.' Obj. at 2. The sentences state: "On May 31, 2013, guards
21 noticed that Armando was nude and talking to himself. When
22 approached, he became violent, shouting that he had used
23 Methamphetamine and was a 'Brainiac.'" Opp'n, Exh. A, ECF No.
24 45-3. Defendants argue these sentences are hearsay and lack
25 foundation. Defs.' Obj. at 2. The Court agrees with
26 Defendants. The coroner was not present at the event he
27 describes in the report and does not have personal knowledge of
28 what occurred or what Mr. Simmons said. See Fed. R. Evid. 602.

1 The Court therefore will not consider the two sentences for
2 purposes of this motion.

3 B. Analysis

4 1. Deliberate Indifference Claim

5 Deliberate indifference to a prisoner's serious medical
6 needs violates the Eighth Amendment proscription against cruel
7 and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 104
8 (1976). A court must consider two elements in assessing a
9 deliberate indifference claim: "the seriousness of the prisoner's
10 medical needs and the nature of the defendant's response to those
11 needs." Mallett v. Sepulveda, 2013 WL 6185593, at *2 (N.D. Cal.
12 Nov. 26, 2013). "A serious medical need exists if the failure to
13 treat a prisoner's condition could result in further significant
14 injury or the unnecessary and wanton infliction of pain." Id.
15 (internal quotation marks omitted). A prison official acts with
16 deliberate indifference if he knows a prisoner "faces a
17 substantial risk of serious harm and disregards that risk by
18 failing to take reasonable steps to abate it." Id.

19 Defendants argue they did not act deliberately indifferent
20 toward Mr. Simmons because "[w]hen Rodriguez and Hall observed
21 Simmons' unusual behavior, they promptly delivered Simmons to
22 the medical holding cell" to see the nurse and "informed the
23 supervising sergeant." Mot. at 6.

24 Plaintiff argues Rodriguez and Hall acted with deliberate
25 indifference because "[i]nstead of calling for an outside
26 ambulance, which could have drastically cut down the time that
27 it took to get Mr. Simmons to the hospital, [they] only called
28 for medical assistance and then placed Mr. Simmons in a holding

1 cell until he was transported to the [prison's] medical
2 facility." Opp'n at 4.

3 Defendants respond that they "diligently attended to
4 Simmons's needs." Reply at 1. Additionally, Defendants contend
5 "Plaintiff has produced no evidence that Rodriguez or Hall knew
6 of any medical need that could not have been addressed by the
7 prison medical staff." Id. at 2.

8 The Court agrees with Defendants. The undisputed facts and
9 the evidence presented by the parties show Defendants responded
10 to Mr. Simmons' medical needs by removing him from his cell,
11 taking him to the nurse, and notifying their supervisor.
12 Plaintiff has not submitted any evidence to show that Defendants
13 ignored Mr. Simmons or that his symptoms indicated that he
14 needed to go to the hospital immediately. Defendants sought out
15 medical attention for Mr. Simmons when they discovered he needed
16 it. Plaintiff has not identified a genuine issue of material
17 fact as to whether Defendants acted with deliberate
18 indifference. The Court therefore grants Defendants' motion for
19 summary judgment on Plaintiff's deliberate indifference claim.

20 2. Third Claim: Loss of Spousal Relationship Under
21 Substantive Due Process

22 Family members have a liberty interest in companionship with
23 one another, and a state actor's interference with that
24 relationship may violate procedural or substantive due process
25 rights. Raygoza v. City of Fresno, 2014 WL 6929590, at *13 (E.D.
26 Cal. Dec. 9, 2014). Only official conduct that "shocks the
27 conscience," however, gives rise to a due process violation.
28 Barber v. City of Santa Rosa, 2010 WL 5069868, at *10 (N.D. Cal.

1 Dec. 7, 2010) (citing Lewis, 523 U.S. at 846, 854-55). A
2 plaintiff can establish that an officer's conduct "shocks the
3 conscience" by showing the officer acted with either deliberate
4 indifference or the more stringent "purpose to harm." Cosentino
5 v. Kurtz, 2013 WL 1927119, at *9 (C.D. Cal. Apr. 16, 2013)
6 (internal quotation marks omitted).

7 As discussed above, Plaintiff has failed to show that
8 Defendants acted with deliberate indifference toward Mr. Simmons.
9 Plaintiff has also failed to provide any evidence showing
10 Defendants acted with the purpose to harm Mr. Simmons.
11 Defendants' motion for summary judgment on Plaintiff's loss of
12 spousal relationship claim is granted.

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14 III. ORDER

15 For the reasons set forth above, the Court GRANTS
16 Defendants' motion for summary judgment.

17 IT IS SO ORDERED.

18 Dated: April 17, 2017

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21 JOHN A. MENDEZ,
22 UNITED STATES DISTRICT JUDGE
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