

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

DEXTER BROWN,
Plaintiff,
v.
SAHIR NASEER, et al.,
Defendants.

CIV. NO. 2:14-0225 WBS CKD P
MEMORANDUM AND ORDER RE: MOTION
FOR SUMMARY JUDGMENT

-----oo0oo-----

Plaintiff Dexter Brown ("Brown"), a prisoner proceeding pro se, brought this action for violation of his civil rights under 42 U.S.C. § 1983 primarily alleging violations of his Eighth Amendment rights. Before the court is Defendant Sahir Naseer's ("Naseer") motion for summary judgment (Docket No. 47). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 7, 2016, the magistrate judge filed findings and recommendations (Docket No. 64) in which she recommended that the action be dismissed for failure to exhaust administrative

1 remedies. As the court will resolve the motion based on the
2 merits of Brown's claim, the court expresses no opinion as to
3 whether Brown properly exhausted his administrative remedies.
4 The court also does not address whether Naseer is entitled to
5 qualified immunity.

6 I. Factual Background and Procedural Background

7 In Brown's Third Amended Complaint, he alleges that
8 between September 29 and October 1, 2013, he suffered from chest
9 pain, muscle weakness, nausea, vomiting, and other symptoms
10 consistent with too much potassium in the blood, a condition
11 known as hyperkalemia. Brown alleges that while he was suffering
12 from these symptoms, Naseer, a physician at the California Health
13 Care Facility in Stockton, wrote medical orders placing him on
14 fluid restrictions, "thereby preventing plaintiff from
15 implementing counter-measures to abate the toxicity of potassium
16 in plaintiff's blood." Third Am. Compl. ¶ 6.

17 Brown also alleges that Naseer directed medical staff
18 not to run various tests or send Brown to receive emergency
19 medical services. On October 1, 2013, Brown's chest pain and
20 other symptoms worsened and he was sent to San Joaquin General
21 Hospital, where tests revealed he was hyperkalemic with a
22 critical potassium level.

23 As a result of these actions, Brown filed a complaint
24 against Naseer and other defendants. After Brown filed multiple
25 amended complaints, the magistrate judge screened the Third
26 Amended Complaint in her December 2, 2014 Findings and
27 Recommendations and found 1) it stated a claim upon which relief
28 can be granted under the Eighth Amendment against defendant

1 Naseer but 2) all other claims and defendants should be
2 dismissed. The court adopted the Findings and Recommendations on
3 February 24, 2015. Defendant Naseer later filed the instant
4 motion for summary judgment seeking dismissal of Brown's Eighth
5 Amendment claim.

6 II. Legal Standard

7 Summary judgment is proper "if the movant shows that
8 there is no genuine dispute as to any material fact and the
9 movant is entitled to judgment as a matter of law." Fed. R. Civ.
10 P. 56(a). A material fact is one that could affect the outcome
11 of the suit, and a genuine issue is one that could permit a
12 reasonable jury to enter a verdict in the non-moving party's
13 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
14 (1986). The party moving for summary judgment bears the initial
15 burden of establishing the absence of a genuine issue of material
16 fact and can satisfy this burden by presenting evidence that
17 negates an essential element of the non-moving party's case.
18 Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

19 Alternatively, the moving party can demonstrate that the
20 nonmoving party cannot produce evidence to support an essential
21 element upon which it will bear the burden of proof at trial.
22 Id.

23 Once the moving party meets its initial burden, the
24 burden shifts to the non-moving party to "designate 'specific
25 facts showing that there is a genuine issue for trial.'" Id. at
26 324 (quoting then-Fed. R. Civ. P. 56(e)). To carry this burden,
27 the non-moving party must "do more than simply show that there is
28 some metaphysical doubt as to the material facts." Matsushita

1 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).
2 "The mere existence of a scintilla of evidence . . . will be
3 insufficient; there must be evidence on which the jury could
4 reasonably find for the [nonmoving party]." Anderson, 477 U.S.
5 at 252.

6 In deciding a summary judgment motion, the court must
7 view the evidence in the light most favorable to the non-moving
8 party and draw all justifiable inferences in its favor. Id. at
9 255. "Credibility determinations, the weighing of the evidence,
10 and the drawing of legitimate inferences from the facts are jury
11 functions, not those of a judge . . . ruling on a motion for
12 summary judgment" Id.

13 To state a claim under 42 U.S.C. § 1983 based on
14 inadequate medical care under the Eighth Amendment, the plaintiff
15 must show that the defendant acted with deliberate indifference
16 to his serious medical needs. See Estelle v. Gamble, 429 U.S.
17 97, 104 (1976). "Deliberate indifference is a high legal
18 standard," and it requires more than a showing that prison
19 officials were negligent or even grossly negligent. Toguchi v.
20 Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). The plaintiff must
21 show "(a) a purposeful act or failure to respond to a prisoner's
22 pain or possible medical need and (b) harm caused by the
23 indifference." See Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
24 2006). A difference of medical opinion regarding a prisoner's
25 treatment "does not amount to a deliberate indifference to [the
26 prisoner's] serious medical needs." Sanchez v. Vild, 891 F.2d
27 240, 242 (9th Cir. 1989).

28 III. Discussion

1 Here, Brown has not shown anything more than a
2 difference of opinion as to the proper diagnosis and treatment of
3 his condition. Brown concedes that he was on dialysis at the
4 time of his treatment and that excessive fluid intake in dialysis
5 patients can lead to fluid retention, which can cause fluid to
6 accumulate in the lungs, respiratory failure, and subsequent
7 death. Brown also concedes that he had engaged in drinking large
8 amounts of water in the past in order to self-medicate himself,
9 and he further concedes that Naseer placed him on fluid
10 restrictions to prevent him from drinking copious amounts of
11 water. The facts that Brown believed he was never at risk for
12 respiratory failure or death from this practice and that Brown
13 believed Naseer intended to harm him do not raise a genuine issue
14 of material fact as to whether Naseer was deliberately
15 indifferent.¹

16 In essence, Brown contends that he should have been
17 allowed to self-medicate with water to treat hyperkalemia and
18 that he should have been tested and treated for hyperkalemia, in
19 light of his symptoms. However, he provides no admissible
20 evidence that his preferred treatment was an appropriate
21 treatment for his condition, much less that Naseer was
22 deliberately indifferent by refusing such treatment, in light of
23 the undisputed risks of such treatment for dialysis patients.
24 Nor do the facts that a subsequent blood test showed an elevated

25
26 ¹ Similarly, Brown's vague statements about individuals
27 adding potassium to his diet and similar claims that others
28 intended to harm him are insufficient to raise a genuine issue of
material fact as to whether Naseer was deliberately indifferent.

1 potassium level, or that as Brown contends, he exhibited symptoms
2 consistent with hyperkalemia, show that Naseer was deliberately
3 indifferent by refusing to test his potassium levels or give him
4 an EKG, without any competent evidence showing, for example, how
5 other doctors would have responded to such symptoms. Viewing the
6 facts in the light most favorable to Brown, the record supports
7 only a potential claim for negligence, not deliberate
8 indifference.²

9 IT IS THEREFORE ORDERED that Naseer's motion for
10 summary judgment be, and the same hereby is, GRANTED.

11 Dated: October 11, 2016

12 

13 **WILLIAM B. SHUBB**
14 **UNITED STATES DISTRICT JUDGE**

15
16
17
18
19
20
21 ² Brown contends in his amended response to Naseer's
22 motion for summary judgment that Naseer did not address his
23 arguments regarding "compulsory medical treatment." However,
24 while Brown's Third Amended Complaint does mention his attempt to
25 refuse fluid restrictions, it is unclear how any compulsory
26 medical treatment in the form of fluid restrictions would
27 constitute a cognizable claim aside from the denial of adequate
28 medical care under the Eighth Amendment of the Constitution.
Moreover, the magistrate judge's December 2, 2014 Findings and
Recommendations, which were adopted in full by the court, found
that Brown stated a claim for violation of the Eighth Amendment
only, and thus only Brown's Eighth Amendment claim is properly
before the court.