

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

ARVIN RUSSELL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CV408-058
)	
DOCTOR FOGAM,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Plaintiff has amended his complaint pursuant to Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure to add a claim against Dr. Eric Fogam and to reassert claims against Dr. Awe, Warden Williams, and Deputy Warden Thomas. Doc. 23.¹ All of these claims were raised in his initial complaint (doc. 1) and dismissed by the district judge for failing to state a claim for relief (doc. 20).

Specifically, Russell alleges that Doctors Fogam and Awe unconstitutionally delayed his access to certain medication and that his

¹ The Court explicitly advised Russell in a prior order that he was permitted to amend his complaint once before the remaining defendant had been served. Doc. 22. After that order was entered, Russell submitted this "motion." Doc. 23. Accordingly, the Court construes this motion as his amendment, and the Clerk is hereby **DIRECTED** to amend the docket sheet to so reflect.

prison wardens were deliberately indifferent to his medical needs. Doc. 23. As before, however, he fails to allege that there exists evidence of subjective deliberate indifference.

In his original complaint, Russell stated that whenever his medications ran out, he had "to wait unreason [sic] time before it [was] reorder[ed]." Doc. 1 at 11. He now asserts that he has discovered that Doctors Fogam and Awe "were responsible for the reordering of his medication." Doc. 23. The new allegations, however, still fall far short of showing that any delay in reordering resulted from the doctors' deliberate indifference to his medical needs. *See* doc. 20 at 13, 15 (district judge noting that Russell failed to allege facts supporting the deliberate indifference element of this claim).

Russell also alleges that he has discovered that the wardens were on notice of certain deprivations of necessary medical care but did nothing to "fix the situation." Doc. 23. This is *precisely the same argument* that the district judge rejected. Doc. 1 at 11 (complaint stating that the wardens were on notice of medical deprivations but did nothing); doc. 20 at 7 (district judge's order adopting this Court's recommendation that the claims

be dismissed, since notice of a violation standing alone is insufficient to show the kind of direct involvement required to state an Eighth Amendment claim). As before, this claim is meritless.

Russell also declares that a default judgment should be entered against Dr. Fogam. Docs. 26 & 28. He states that defendant Fogam has failed to respond to his complaint within the time limit for filing an answer. Doc. 26. He is mistaken. A request for waiver of service form was mailed by the Marshal to Fogam's counsel on February 3, 2009. Doc. 25. It was returned executed on February 25, 2009. Doc. 27. Accordingly, Dr. Fogam has sixty days from date the request was sent to submit his answer--that is, he has until early April 2009. Fed. R. Civ. P. 4(d)(3).

For all of the reasons explained above, Russell's reasserted claims should be **DISMISSED**, and his first and second declarations for entry of default (docs. 26 & 28) should be **DENIED**.

SO REPORTED AND RECOMMENDED this 9th day of March, 2009.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA