

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

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| CHARLES DONELSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 15- CV- 95- SMY-RJD |
| |) | |
| DR. SHEARING, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

YANDLE, District Judge:

Before the Court is Plaintiff's Motion to Alter or Amend the Order on Defendants Robert Shearing and Samuel Nwaobosi's Motion for Summary Judgment and Defendant Aimee Lang's Motion for Summary Judgment. (Doc. 251.) For the following reasons, Plaintiff's motion is

DENIED.

Plaintiff's claims in this action are as follows:

Count 1: Eighth Amendment deliberate indifference to serious medical needs claim against Dr. Shearing for failure to treat Plaintiff's tonsils;

Count 2: Eighth Amendment deliberate indifference to serious medical needs claim against Dr. Nwaobasi for failure to treat Plaintiff's tonsils; and

Count 3: Eighth Amendment deliberate indifference to serious medical needs claim against Medical Technician Aimee Lang for delaying Plaintiff's appointments with physicians.

(Doc. 57.) On June 19, 2017, the Court granted Defendant Lang's Motion for Summary Judgment, but denied Defendants Nwaobosi and Shearing's Motion for Summary Judgment, except with respect to Plaintiff's claim against Defendant Nwaobosi regarding an ibuprofen prescription. (Doc. 246.)

On July 6, 2017, Plaintiff filed the instant motion, requesting that the Court alter and amend the summary judgment Order under Fed. R. Civ. P. 59(e). A motion challenging the merits of a district court order will be considered as having been filed pursuant to either Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994). A motion to alter or amend judgment filed pursuant to Rule 59(e) may only be granted if the movant can show a mistake of law or fact or presents newly discovered evidence that could not have been discovered previously. *Matter of Prince*, 85 F.3d 314 (7th Cir. 1996); *Deutsch v. Burlington N. R.R. Co.*, 983 F.2d 741 (7th Cir. 1993). Rule 60(b) permits a court to relieve a party from an order or judgment based on such grounds as mistake, surprise or excusable neglect by the movant; fraud or misconduct by the opposing party; a judgment that is void or has been discharged; or newly discovered evidence that could not have been discovered within the 28-day deadline for filing a Rule 59(b) motion. Fed. R. Civ. P. 60(b)(1).

“[W]hether a motion filed within [28] days of the entry of judgment should be analyzed under Rule 59(e) or Rule 60(b) depends on the substance of the motion, not on the timing or label affixed to it.” *Obriecht v. Raemisch*, 517 F.3d 489, 493 (7th Cir. 2008). Nevertheless, a motion to reconsider filed more than 28 days after entry of the challenged order, “automatically becomes a Rule 60(b) motion.” *Talano v. N.W. Med. Faculty Found., Inc.*, 273 F.3d 757, 762 (7th Cir. 2001). The instant motion challenges the Court’s findings of fact and conclusions of law in its summary judgment Order, and was filed within 28 days of the issuance of the Order. Therefore, the Court will decide the instant motion in accordance with Rule 59(e).

In its summary judgment Order, the Court found that the record contained no evidence that the ibuprofen prescribed by Dr. Nwaobosi aggravated Plaintiff’s medical condition or that Dr. Nwaobosi knew of the potential for such harm. Plaintiff disputes this finding, arguing that

his medical records list his medication and show that he had ulcers. Plaintiff also argues that physicians are required to review medical history prior to any action and that Dr. Nwaobosi thus necessarily knew Plaintiff's medical history.

To establish deliberate indifference to a medical condition, a prisoner must show a condition that is sufficiently serious (objective component) and that an official acted with a sufficiently culpable state of mind in failing to address the condition (subjective component). *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). "A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). An official "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Jackson v. Ill. Medi-Car, Inc.*, 300 F.3d 760, 765 (7th Cir. 2002).

The Court has again reviewed the record and reaffirms its finding that the record does not show that Dr. Nwaobosi knew ibuprofen would harm Plaintiff. The Court acknowledges the possibility that Plaintiff's medical records may include sufficient information for a medical expert to reach the conclusion that ibuprofen would harm Plaintiff. However, Plaintiff offers no admissible evidence that any qualified medical professional reached such a conclusion, and, at the summary judgment stage, the Court cannot accept unsupported allegations as true. *See Fed. R. Civ. P. 56(c)(1)(A)*.

Additionally, contrary to Plaintiff's argument, Plaintiff has conceded that Dr. Nwaobosi did not review Plaintiff's medical history. (Doc. 232-5 at 10.) Plaintiff also concedes that he did not take the ibuprofen. (*Id.*) In short, the record lacks evidence showing that the ibuprofen

prescription caused any harm to Plaintiff, that Dr. Nwaobosi was aware of facts necessary to conclude that ibuprofen would harm Plaintiff or that Dr. Nwaobosi reached that conclusion. Accordingly, Plaintiff's request for the Court to alter its finding regarding the ibuprofen prescription is denied.

Plaintiff also challenges the Court's summary judgment Order because it does not address the allegations in his Complaint regarding an ear infection. Plaintiff's Complaint states, in relevant part, "I got sick thinking it was a ear infection but my tonsil got infected." (Doc. 2 at 26.) Based on this allegation, the Court reasonably construed Plaintiff's claim as pertaining to the treatment of his tonsils only. Moreover, even if Plaintiff properly asserted a claim related to an ear infection, the record contains no medical evidence that Plaintiff had an ear infection. Accordingly, the Court did not err by not addressing Plaintiff's allegations regarding an ear infection.

The Court also found no medical evidence from which a reasonable jury could find that delays in treatment resulted in any specific detriment to Plaintiff and further found no evidence to establish that more immediate appointments would have improved Plaintiff's medical condition. Plaintiff disputes these findings, arguing that "the harm was exacerbated" and that he was in pain and could not take ibuprofen.

"[A] plaintiff must offer medical evidence that tends to confirm or corroborate a claim that the delay was detrimental." *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007). According to Plaintiff's Declaration, he consistently rated his pain as a 10 on a scale of 1 to 10, which suggests that Plaintiff's level of pain remained constant during the relevant timeframe. (Doc. 236 at 117.) Further, Plaintiff testified that he did not take the pain medication offered by Dr. Nwaobosi. (Doc. 232-7 at 25.) Additionally, the medical records indicate that Dr. Shearing

offered no treatment to alleviate Plaintiff's pain. (Doc. 217-1 at 9.) Plaintiff offers no explanation or evidence as to how a more immediate appointment with these physicians would have improved his pain. Accordingly, the Court reaffirms its finding that the record contains no evidence showing that the delays caused any harm to Plaintiff.

For the foregoing reasons, Plaintiff's Motion to Alter or Amend the Order on Defendants Robert Shearing and Samuel Nwaobosi's Motion for Summary Judgment and Defendant Aimee Lang's Motion for Summary Judgment (Doc. 251) is DENIED.

IT IS SO ORDERED.

DATED: July 14, 2017

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge