

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JOHNNIE HARRIS

CIVIL ACTION

VERSUS

NO. 18-7685-DMD

SHERIFF MARLIN GUSMAN, ET AL.

ORDER AND REASONS

Plaintiff has filed another motion for summary judgment with respect to his claim against Captain Taylor.¹ The Court denied plaintiff's prior motion for summary judgment on that claim.²

Plaintiff originally stated his claim against Captain Taylor as follows:

I wrote and complained to Captain Taylor since 7/30/2018 that I had not received my full liquid diet. I personally watched a nurse enter my paper-work into the computer system and for me not to be able to eat until 8/3/2018 there's no excuse. Captain Taylor never responded to me personally. Somebody told me that they were just informed of my diet and they sent a form for me to sign for my diet (5) days after it was ordered and it still took (2) more days just to receive my first meal since 7/26/2018.³

He later added the following allegations:

To farther substantiate Plaintiff's case Dr. Xuong Nguyen stated that he himself sent multiple urgent notices to Captain Taylor and the kitchen staff concerning Plaintiff's liquid diet. So to say that Captain Taylor was unaware of the situation is not true.

... Because by Doctor Xuong Nguyen statement alone tells the Court that his urgent notices with straight to her computer or her desk.⁴

As previously explained, the Court may grant summary judgment only when no genuine issue of material fact exists and the mover is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In the instant case, a genuine issue of material fact remains in dispute, namely whether

¹ Rec. Doc. 67.

² Rec. Docs. 51 and 60.

³ Rec. Doc. 11, p. 3.

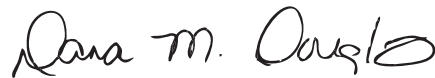
⁴ Rec. Doc. 63, pp. 4-5.

Captain Taylor was in fact *personally* (1) aware that plaintiff was not receiving his liquid diet or (2) involved with the failure to provide that diet. Therefore, although the claim against Captain Taylor will be allowed to proceed pending further development by the parties, the Court again finds that plaintiff is not entitled to summary judgment on the claim at this stage of the proceedings.

Accordingly,

IT IS ORDERED that plaintiff's motion for summary judgment, Rec. Doc. 67, is **DENIED**.

New Orleans, Louisiana, this 6th day of April, 2020.



DANA M. DOUGLAS
UNITED STATES MAGISTRATE JUDGE