

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BRIAN TIMMS,	:	NO. 1:08-CV-00011
	:	
Plaintiff,	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
AMY WEISS, H.C.A., et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Magistrate Judge's September 22, 2009 Report and Recommendation (doc. 27), to which Plaintiff filed no objection. For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation, and GRANTS Defendants' Motion for Summary Judgment.

**I. Background**

The Magistrate Judge offered a comprehensive review of the facts in this matter, which the Court incorporates by reference (doc. 27). In summary, Plaintiff, an inmate currently incarcerated at Chillicothe Correctional Institute, alleges that, while at Lebanon Correctional Institution ("LeCI"), he was taken to Middletown Regional Hospital ("MRH") for treatment of abdominal pain (Id.). Medical staff at MRH diagnosed Plaintiff with kidney stones on September 20, 2007, and administered "stronger" medication for pain than what he ultimately received upon his return to LeCI (Id.).

Plaintiff claims that Defendants gave him inadequate continuing treatment for his medical condition at LeCI based on the denial of continued "stronger" pain medication after his return there (Id.). However, Plaintiff is unable to remember what pain medication Defendants gave him upon his return to LeCI (Id.).

Defendants argue they administered continuing medical treatment to Plaintiff including pain medication after his return from MRH (Id.). Indeed, the record shows Plaintiff received Tylenol 3 and Ibuprofen, and also shows Plaintiff refused pain medication (Id.).

Plaintiff filed his Complaint on January 14, 2008, alleging deliberate indifference to his medical needs and brought this action pursuant to 42 U.S.C. § 1983 against Defendants Amy Weiss and Dr. James McWeeney (doc. 4). Defendants filed their Motion for Summary Judgment on December 3, 2008, arguing that Plaintiff's claims lack merit because (1) Plaintiff failed to allege the personal involvement required to hold defendants liable; (2) Plaintiff cannot demonstrate what medication, if any, he was denied (doc. 21).

## **II. The Magistrate Judge's Report and Recommendation (doc. 27)**

The Magistrate Judge found well-taken Defendants' argument that Plaintiff provided no evidence in support of his claim that Defendants denied him pain medication (doc. 27). Citing Westlake v. Lucas, 537 F.2d 857, 860-61 n.5 (6<sup>th</sup> Cir. 1976), the

Magistrate Judge noted that when medical assistance has been provided, such treatment must be so “woefully inadequate as to amount to no treatment at all” in order to give rise to a cause of action under § 1983. The Magistrate Judge concluded that Plaintiff received regular and consistent medical treatment for his condition. Furthermore, the Magistrate Judge noted that the medical records provided by the Defendants show they administered Ibuprofen and Tylenol #3 for the management of his pain (doc. 27).

The Magistrate Judge concluded that, while Plaintiff was dissatisfied with the medical treatment he received, this is insufficient for purposes of stating a claim under the Eighth Amendment (Id. citing Kirkham v. Wilkinson Case No. 03-4045, 2004 WL 1380083 at \*2 (6<sup>th</sup> Cir. 2004) (citing Estelle v. Gamble, 429 U.S. 97, 104-105 (1976))). Additionally, the Magistrate Judge noted Defendants’ argument that Plaintiff has proffered no evidence demonstrating personal involvement in the alleged denial of medication on the part of either Defendant. For all of the above reasons, the Magistrate Judge recommended the Court grant Defendants’ Motion for Summary Judgment (doc. 21), and dismiss Plaintiff’s Complaint (doc. 4).

### **III. Analysis**

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court finds no reason to reject the conclusion of the Magistrate Judge’s well-reasoned opinion. Plaintiff’s

dissatisfaction with the specific course of his treatment is not sufficient in order to demonstrate that he received inadequate medical care. Moreover, the Court has reviewed the evidence and agrees with the Magistrate Judge that Plaintiff has not proffered evidence that demonstrates that prison medical staff were deliberately indifferent to his medical needs. Plaintiff received regular medical care, was taken to an off-site hospital for treatment, and received medication for his condition upon his return to LeCI. The Court finds no genuine issue as to any material fact and concludes that Defendant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

The Court notes that Plaintiff filed no objection to the Report and Recommendation, even after the Court granted leave for an extension of time to do so (doc. 30). Plaintiff received notice of his extension of time (doc. 31). The deadline for any objection has now passed (doc. 30).

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(c), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6<sup>th</sup> Cir. 1981). Plaintiff filed no objection to the Magistrate Judge's Report and Recommendation.

Accordingly, the Court hereby ADOPTS and AFFIRMS the

Magistrate Judge's Report and Recommendation (doc. 27), GRANTS Defendants' Motion for Summary Judgment (doc. 21), DISMISSES this case from the Court's docket, and CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court's Order would not be taken in good faith. See McGore v. Wigglesworth, 114 F.3d 601 (6<sup>th</sup> Cir. 1997).

SO ORDERED.

Dated: December 10, 2009

/s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge