

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

DAVID A. GEORGE and
TINA N. GEORGE,

Plaintiffs,

v.

Civil Action No. 2:08-0141

KANAWHA COUNTY SHERIFF'S DEPARTMENT and
SHERIFF MIKE RUTHERFORD and
OFFICER J. M. VERNON and
OFFICER DICK COLL and
NICHOLAS FRYE and TERRY MITCHELL and
STEPHANIE RHODES and SHERRY QUEEN
MICHELLE HARRISON and MISTY GARBIN and
AARON MEADOWS,

Defendants

MEMORANDUM OPINION AND ORDER

Pending are defendant J. M. Vernon's motion to dismiss the amended complaint ("Vernon motion to dismiss"), filed March 2, 2009, the motion to dismiss the amended complaint filed by defendants Nicholas Frye, Terry Mitchell, and Stephanie Rhodes ("jail employees' motion to dismiss"), filed March 26, 2009, and the motion to dismiss, or in the alternative, for summary judgment, as to the amended complaint, filed by defendants Sherry Queen, Michelle Harrison, Misty Garbin, and Aaron Meadows ("nurses' motion for summary judgment"), on March 31, 2009.

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who has submitted her Proposed

Findings and Recommendations ("PF&R") pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The magistrate judge has filed three PF&Rs, two filed on October 21, 2009, and the third filed November 9, 2009.

The court has reviewed the PF&Rs entered by the magistrate judge on the aforementioned dates. The first PF&R entered on October 21, 2009, addresses the Vernon motion to dismiss. The magistrate judge concludes therein that plaintiffs have failed to demonstrate that Deputy Vernon was deliberately indifferent to plaintiff Tina George's serious medical needs. The magistrate judge recommends that the court find that Deputy Vernon is entitled to qualified immunity for his failure to document that Ms. George advised him at the time he arrested her that she had a seizure disorder medical condition. Shortly thereafter, at the time of booking, Ms. George herself so advised the booking clerks, following which she apparently had a seizure approximately 24 hours later.

The magistrate judge further recommends that the court find that there is no legal basis for the inclusion of any claims in the amended complaint for plaintiff David George related to Deputy Vernon. Based upon these recommendations, the magistrate judge recommends that the Vernon motion be granted respecting the

amended complaint, but that he remain a defendant as to the allegations against him in the original complaint.

The second PF&R entered October 21, 2009, addresses the jail employees' motion to dismiss on a similar basis. The magistrate judge concludes therein that plaintiffs have failed to allege in the amended complaint, and thus failed to state a claim, that the jail employees, who, in keeping with their duties, merely recorded, based on her assertion, that she had a seizure disorder, violated Ms. George's Fourteenth Amendment rights by breaching the applicable deliberate indifference standard. The magistrate judge further recommends that the court find that there is no legal basis for the inclusion of any claims in the amended complaint for plaintiff David George related to the jail employees. Based upon these recommendations, the magistrate judge recommends that the jail employees' motion to dismiss be granted with prejudice.

The third PF&R addresses the nurses' motion for summary judgment. The magistrate judge concludes therein that the undisputed facts, taken in the light most favorable to Ms. George, again fail to demonstrate that nurses Queen, Harrison, Garbin, and Meadows were deliberately indifferent to Ms. George's serious medical needs or that their oversight relating to any such needs resulted in any serious harm to Ms. George. The

magistrate judge further recommends that nurses Queen, Harrison, Garbin, and Meadows receive qualified immunity regarding their care of Ms. George during her incarceration. The magistrate judge additionally recommends that the court find that there is no legal basis for the inclusion of any claims in the amended complaint for plaintiff David George related to nurses Queen, Harrison, Garbin, and Meadows. Based upon these recommendations, the magistrate judge recommends that the portion of the nurses' motion for summary judgment that seeks summary judgment be granted and that the remainder of the same motion seeking dismissal pursuant to Rule 12(b)(6) be denied as moot.

On October 27, 2009, the Georges filed objections to the first and second PF&Rs. On November 18, 2009, the Georges filed objections to the third PF&R. The objections do not overcome the magistrate judge's analysis respecting why the amended complaint does not meet the demanding deliberate indifference threshold. The objections filed November 18, 2009, are the most substantial. Despite their girth, the evidence and allegations found therein do not raise a genuine issue of material fact on the question of deliberate indifference.

As noted by the magistrate judge, the nurses provided immediate medical attention during Ms. George's seizure activity and Ms. George did not sustain a serious injury during her

incarceration. While Ms. George was not immediately provided the medications designed to abate her seizure activity, efforts were undertaken to ascertain the nature of the medications and they were thereupon provided to her at a delayed, though reasonably seasonable, time. Again, the Georges' allegations amount to, at most, a showing of negligence that does not satisfy the governing Fourteenth Amendment standard.

Inasmuch as the objections are not meritorious, and following a de novo review, the court concludes that the recommended disposition is correct. The court, accordingly, ORDERS as follows:

1. That the magistrate judge's first, second, and third PF&Rs be, and they hereby are, adopted and incorporated herein in their entirety;
2. That the Vernon motion to dismiss, the jail employees' motion to dismiss, and the nurses' motion for summary judgment be, and they hereby are, granted;
3. That defendants Nicholas Frye, Terry Mitchell, Stephanie Rhodes, Sherry Queen, Michelle Harrison, Misty Garbin, and Aaron Meadows be, and they hereby are, dismissed.

4. That the amended complaint be, and it hereby is, dismissed; and

5. That the claims remaining in the original complaint against defendants the Kanawha County Sheriff's Department, Sheriff Mike Rutherford, Deputy J. M. Vernon, and Officer Dick Coll be, and they hereby are, referred anew to the magistrate judge for further proceedings in accordance with the March 11, 2008, standing order.

The Clerk is directed to forward copies of this written opinion and order to counsel of record, the pro se plaintiffs, and the United States Magistrate Judge.

DATED: January 27, 2010



John T. Copenhaver, Jr.
United States District Judge