Dobbins v. Hofmann, No. 646-10-07 Wrcv (Eaton, J., Jan. 9, 2009)

STATE OF VERMONT
WINDSOR COUNTY, SS

William Dobbins Plaintiff v. Robert Hofmann, Commissioner Defendant	SUPERIOR COURT Docket No. 646-10-07 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 2, 2007, Plaintiff, William Dobbins, filed a civil action against Robert Hofmann, the Commissioner of the Vermont Department of Corrections, alleging violations of the Eighth Amendment prohibition against cruel and unusual punishment. The complaint references attachments purporting to be sick call requests and grievances. The referenced documents were not attached to the complaint and have not been produced to the present time.

On July 28, 2008, the Defendant moved for summary judgment. A motion to enlarge time to respond to the motion was filed by Plaintiff on August 29, 2008. The Court granted the request for additional time directing the Plaintiff's response to be filed no later than September 30, 2008.

At present no response to Defendant's summary judgment motion has been filed by Plaintiff.

Undisputed Facts

Plaintiff contends Defendant violated his right to be free from cruel and unusual punishment as a result of improper medical care. Plaintiff contends his requests for medical treatment were ignored.

Plaintiff has not responded to requests from the Defendant for discovery information providing a factual basis for his complaint. Referenced attachments in the complaint were not attached and have not yet been produced.

On December 27, 2007 Defendant served Plaintiff with discovery requests seeking a factual basis for Plaintiff's complaint. Plaintiff was also asked to produce copies of all documents which were intended to be attached to the complaint. The Defendant's interrogatories also requested expert information in support of Plaintiff's allegations concerning medical mistreatment.

At a status conference on April 2, 2008 Plaintiff was instructed to respond to Defendant's discovery requests within 45 days. On April 9, 2008 counsel for the Defendant wrote to the Plaintiff reminding him of his obligation to respond to the discovery requests. To date no answers to Defendant's discovery have been forthcoming.

A summary judgment motion has been pending since July 2008. Plaintiff has made no response to this motion, despite requesting additional time to do so. Other than asking for additional time to respond to the motion, Plaintiff has done nothing to prosecute this action since it was filed. All that has been asserted by the Plaintiff are the bare allegations of his complaint.

Since filing this action, Plaintiff has been released from custody.

Discussion

Summary judgment is appropriate where, taking the allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to summary judgment as a matter of law. This standard presupposes that the nonmoving party has had the opportunity to develop his factual case. *Zukatis v. Perry*, 165 Vt. 298 (1996). In order to prevail on a motion for summary judgment, the moving party must satisfy the stringent two-part test; that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Wesco, Inc. v. Hay-Now, Inc*., 159 Vt. 23 (1992).

It has long been recognized that summary judgment is mandated where a party fails to make a showing sufficient to establish the existence of an element essential to his case and on which he has the burden of proof at trial. *Poplaski v. Lamphere*, 152 Vt. 251 (1989). The nonmoving party is not entitled to rest upon mere allegations or denials in his pleadings but rather is required to, "set forth specific facts showing there is a genuine issue for trial." V.R.C.P 56(e). Accordingly, a nonmoving party cannot rely on speculation and conclusory statements to oppose a motion for summary judgment. *Richards v. Nowicki*, 172 Vt. 142 (2001).

During the pendency of this action, Plaintiff has been released from custody. As a result, to the extent his complaint seeks remedies for failure to provide proper medical care on an ongoing basis, such claims are moot.

Plaintiff's complaint, as liberally construed, alleges malpractice against the prison healthcare system. Plaintiff also alleges violations of the Eighth Amendment of the United States Constitution.

As a starting point, medical malpractice, even if established, does not create an Eighth Amendment violation. To establish an Eighth Amendment

violation, the Plaintiff must show the Defendant's acts or omissions were sufficiently harmful to evidence deliberate indifference to serious medical needs. *Estelle v. Gamble*, 29 U.S. 97 (1976). Plaintiff has made absolutely no showing sufficient to meet this standard and his Eighth Amendment complaints are unsupported.

With respect to Plaintiff's allegations of medical malpractice, the burden is on the Plaintiff to establish that malpractice has been committed. *Senesac v. Associates in Obstetrics and Gynecology*, 141 Vt. 310 (1982). It is the Plaintiff's burden to establish the proper standard of medical skill and care, a departure from that standard by the Defendant, and that such departure was the proximate cause of harm to the Plaintiff. *Utzler v. Medical Center Hospital of Vermont*, 149 Vt. 126 (1987).

Here, Plaintiff has made no showing of the proper standard of medical skill and care, a departure from that standard or any resulting harm. Plaintiff has had adequate time to develop this evidence, having had greater than one year post filing to provide this information. There has been an adequate time for discovery in this matter; and in response to Defendant's Summary Judgment Motion, Plaintiff has failed to produce evidence upon which he bears the burden of proof at trial.

V.R.C.P. 56 permits the moving party to point to an absence of evidence to support an essential element of the nonmoving party's claim. *Bay v. Times Mirror Magazines, Inc.*, 936 F.2nd 112 (2d Cir. 1991). Since the Plaintiff has failed to make a showing sufficient to establish the existence of several elements essential to his case, including the standard of care, breach of that standard and resulting harm, summary judgment is appropriate in this instance.

For the reasons stated herein, Defendant's Summary Judgment Motion is **GRANTED** and Plaintiff's complaint is **DISMISSED**.

Dated at Woodstock this 9th day of January 2009.

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Harold E. Eaton, Jr.
Superior Court Judge

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