

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK BINES, :
PLAINTIFF : CIVIL ACTION
 :
v. :
 :
DONALD T. VAUGHN, et al, :
DEFENDANTS : 96-1528
 :

MEMORANDUM

Giles, C. J.

August __, 2001

Frank Bines ("Bines") filed an amended § 1983 complaint against many defendants, including Dr. Nuhad Kulaylat ("Kulaylat"), on May 13, 1996. Kulaylat brings this motion for summary judgment. Bines has answered the motion. For the reasons that follow, the motion is granted and the complaint, as it applies to Kulaylat, is dismissed.

In late 1995, Bines was a prisoner at the State Correctional Institution in Grateford, Pennsylvania. During a medical examination in November 1995, Kulaylat determined that Bines had enlarged lymph nodes in connection with an HIV infection. Allegedly, Kulaylat maliciously refused to remove the lymph nodes on many occasions and also denied Bines pain medication for the enlarged lymph nodes. (Complaint, ¶ 2). Bines further alleges that Kulaylat denied him a "CD-4 count" and a "viral load test." (Id.). Finally, Bines alleges that Kulaylat failed to insure that he would be housed in a smoke-free and sanitary area of the prison. (Id.).

Kulaylat filed a motion for summary judgment on November 12, 1997. The late Judge Robert S. Gawthrop, to whom the case was then assigned, dismissed Bines' claim that Kulaylat failed to insure appropriate housing for Bines. In connection with the other claims, Judge Gawthrop denied the motion because he found that Kulaylat "offered nothing to show that the plaintiff received adequate medical care during the period relevant to the complaint, such as medical records or treatment notes that document the plaintiff's course of medical treatment at the prison hospital." (Docket #62, p. 4). Judge Gawthrop went on to note that Kulaylat "may renew the motion at a later date." (Id.).

Kulaylat filed this motion on January 12, 2001, and attached detailed medical records on Bines' treatment, an affidavit by Kulaylat referencing the medical records, and an affidavit by Dr. Robert Fischer, an infectious disease specialist.

The third circuit has held that, "Failure to provide medical care to a person in custody can rise to the level of a constitutional violation under § 1983 only if that failure rises to the level of deliberate indifference to that person's serious medical needs." Groman v. Township of Manalapan, 47 F.2d 628, 637 (3d Cir. 1995).

Taking the evidence in the light most favorable to Bines, this court finds that Bines has provided no evidence that Kulaylat was deliberately indifferent to his serious medical

needs.

Bines alleged that Kulaylat was deliberately indifferent to his medical needs for not removing swollen lymph nodes. However, in response to Kulaylat's renewed motion, Bines has not provided any evidence from expert witnesses, affidavits, or medical literature that show that removal of lymph nodes would have been essential, or even an appropriate procedure. Kulaylat, on the other hand, provides an affidavit from an infectious disease specialist who states, "These enlarged lymph nodes are not painful, do not connote a poor diagnosis, do not lead to complications and do not call for treatment. Surgical removal of lymph nodes in such a case would constitute gross negligence and would never be considered by any knowledgeable practitioner." (Defendant's Motion, Exhibit F). Further, the medical records reflect that Kulaylat informed Bines on December 5, 1995 that surgical removal of his lymph nodes was not in Bines' best interests. (Defendant's Motion, Exhibit D4). Mere disagreement about proper medical treatment does not support a claim for an Eight Amendment violation. Monmouth County Correctional Inst'l Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987). Bines has provided no evidence that removal of his swollen lymph nodes was such a medical necessity that the failure to do so would rise to deliberate indifference to his medical needs.

Next, Bines argues that Kulaylat failed to provide him

with pain medication for his enlarged lymph nodes. However, the undisputed facts of this case show that Bines had Tylenol, Motrin, and Aspirin available to him from the prison at any time to help manage pain. (Defendant's Motion, Exhibit E). The medical records show that Kulaylat examined Bines on several occasions and prescribed a nutritional supplement to aid his condition. (Defendant's Motion, Exhibit B, p. 22). Bines does not allege that a particular pain medication was medically necessary for enlarged lymph nodes or that Kulaylat denied him that medication in deliberate indifference to his medical condition.

Finally, Bines does not alleged any facts that would lead a reasonable juror to conclude he suffered any detriment in connection to allegedly being denied a "CD-4 count" or a "viral load test." Bines alleges being deprived these services in his complaint, but has made no other mention of them over the course of discovery. There is no evidence anywhere in the record that suggests that the denial of such tests would constitute deliberate indifference to Bines' medical condition.

Because Bines has not presented any evidence that Kulaylat was deliberately indifferent to his medical condition, judgment is entered in favor of Kulaylat.

An appropriate Order follows.

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JUDGMENT ORDER

AND NOW, this ___ day of August, 2001, upon consideration of Dr. Nuhad Kulaylat's Motion for Summary Judgment (Docket #79), and Plaintiff's response thereto, it is hereby ORDERED that the motion is GRANTED. Judgment is entered in favor of Dr. Nuhad Kulaylat and against Frank Bines.

BY THE COURT:

JAMES T. GILES C.J.

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