

Harrison v. Barkley

United States District Court for the Northern District of New York
April 11, 1997, Decided ; April 14, 1997, FILED
95-CV-964 (RSP/DS)

Reporter: 1997 U.S. Dist. LEXIS 5105

DUANE HARRISON, Plaintiff, vs. WAYNE BARKLEY, Superintendent of Riverside Correctional Facility; DR. ROBERT HOEHN, Dentist at Riverside Correctional Facility; TAMMY BECHAZ, Inmate Grievance Supervisor; and SYLVIA LAGUNA, Inmate Grievance Director, Defendants.

Prior History: [*1] Adopting Magistrate's Document of January 14, 1997, Reported at: [1997 U.S. Dist. LEXIS 5102](#).

Disposition: Harrison's motion for partial summary judgment DENIED. Defendants' motion for summary judgment GRANTED in its entirety. Magistrate judge's O&RR APPROVED and ADOPTED, as set forth herein.

Counsel: APPEARANCES:

DUANE HARRISON, Plaintiff pro se, Hudson Correctional Facility, Hudson, New York.

DEBORAH A. FERRO, Assistant Attorney General, HON. DENNIS C. VACCO, Attorney General for the State of New York, Attorney for Defendants, Albany, New York.

Judges: ROSEMARY S. POOLER, United States District Judge

Opinion by: ROSEMARY S. POOLER

Opinion

MEMORANDUM DECISION AND ORDER

The above matter comes before me following an order and report-recommendation ("O&RR") by Magistrate Judge Daniel Scanlon, Jr., filed on the 17th day of January, 1997. Dkt. No. 38. Following ten days from the service thereof, the Clerk sent me the entire file, including any and all objections filed by the parties herein. Plaintiff Duane Harrison filed objections. Dkt. No. 39.

BACKGROUND

Harrison is a prisoner in the custody of the New York State Department of Correctional Services ("DOCS"). While incarcerated at the Riverview Correctional Facility ("Riverview"), Harrison alleges that defendants violated

his Eighth Amendment [*2] right against cruel and unusual punishment when they denied him adequate medical care. *See* Compl. at 2A.

The essential facts of this case are not in dispute. While confined at Riverview, Harrison complained of tooth pain and requested that Riverview's dentist, defendant Dr. Robert Hoehn, fill a cavity in a tooth. Compl. at 2. Dr. Hoehn examined Harrison and discovered a different tooth that presented a more serious problem requiring extraction. *Id.* Dr. Hoehn informed Harrison that, in accordance with prison regulations, the more serious tooth problem would have to be fixed first. *See* Pl.'s Mem., Dkt. No. 25 Ex. A. (Article 78 Decision and Order). Harrison refused, arguing that the tooth identified for extraction did not cause him pain. Compl. at 2. Dr. Hoehn refused to fill the cavity until Harrison agreed to the extraction. *Id.*

After failing to receive administrative relief, Harrison commenced an Article 78 proceeding, resulting in an order from New York State Supreme Court Judge David Demarest directing defendants to fill Harrison's cavity. *See* Pl.'s Mem., Dkt. No. 25 Ex. A (Article 78 Decision and Order).

In his O&RR, Magistrate Judge Scanlon recommended that [*3] I deny Harrison's motion for partial summary judgment, dkt. no. 13, and grant defendants' cross motion for summary judgment, dkt. no. 22. The magistrate judge also denied as moot Harrison's motion to strike defendant's answers, dkt. no. 12, Harrison's motion to compel discovery, dkt. no. 31, and defendants' request for a protective order and stay of further discovery, dkt. no. 32. Familiarity with the magistrate judge's O&RR is assumed for the purposes of this order.

DISCUSSION

In his objections to the magistrate judge's O&RR, Harrison argues that the favorable outcome of his Article 78 proceeding precludes defendants from challenging his Eighth Amendment claim. *See* Pl.'s Objections, Dkt. No. 39. Harrison also argues that the magistrate judge erred in concluding that his dental problem did not constitute "a serious medical need" as required to sustain his Eighth Amendment claim. *Id.* Furthermore, Harrison argues that defendants are not qualifiedly immune, that his motion to strike defendants' answer should be granted, and that

defendants should be compelled to produce the requested documents. *Id.* Because Harrison filed objections, I review the magistrate judge's [*4] recommendations *de novo*. 28 U.S.C. § 636(b)(1).

A. Offensive Collateral Estoppel

Harrison moved for partial summary judgment arguing that the Article 78 decision established, as a matter of law, that defendants violated his Eighth Amendment rights. See Dkt. No. 25.

This Court must give a prior state court decision the same preclusive effect that the courts of that state would give to it. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982). In New York, issue preclusion only applies when: "(1) the issue in question was actually and necessarily decided in a prior proceeding; and (2) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding." Colon v. Coughlin, 58 F.3d 865, 869 (2d Cir. 1995) (citing Hill v. Coca Cola Bottling Co., 786 F.2d 550, 552-53 (2d Cir. 1986)); Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449, 455, 492 N.Y.S.2d 584, 482 N.E.2d 63, (1985). The party asserting issue preclusion bears the burden of showing that the identical issue was previously decided, while the party against whom the doctrine is asserted bears the burden of showing [*5] the absence of a full and fair opportunity to litigate in the prior proceeding. Kaufman, 65 N.Y.2d at 456.

There is no indication that Judge Demarest considered Harrison's Eighth Amendment claim in his Decision and Order. See Pl.'s Mem., Dkt. No. 25, Ex. A. To establish that defendants denied Harrison adequate medical care in violation of the Eighth Amendment, Harrison had to demonstrate that defendants displayed deliberate indifference to his serious medical needs. Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994), cert. denied, 130 L. Ed. 2d 1074, 115 S. Ct. 1108 (1995). This inquiry required a finding that defendants acted "with a sufficiently culpable state of mind" and that the alleged injury was "objectively harmful enough to establish a constitutional violation." Garcia v. Senkowski, 919 F. Supp. 609, 614-15 (N.D.N.Y. 1996) (McAvoy, C.J.). Judge Demarest did not decide these issues. Instead, he interpreted DOC regulations and held that Harrison's initial request should have been treated on the same priority level as the tooth extraction. Having made this finding, however, Judge Demarest goes on to state that "it would be improper for [him] to substitute [his] judgment [*6] for Dr. Hoehn (sic)." See Pl.'s Mem. Dkt. No. 25, Ex. A.

Because Judge Demarest did not address whether Harrison had a "serious medical need," to which defendants were

deliberately indifferent, I deny Harrison's motion for partial summary judgment based on a theory of offensive collateral estoppel.

B. Eighth Amendment

Magistrate Judge Scanlon recommends that I grant defendants' motion for summary judgment because Harrison failed to establish that his tooth pain was a serious medical condition. As I stated above, in order to find that defendants violated Harrison's Eighth Amendment rights, he must demonstrate that defendants were deliberately indifferent to his serious medical needs. See Banks v. Mannoia, 890 F. Supp. 95, 98 (N.D.N.Y. 1995) (citing Estelle v. Gamble, 429 U.S. 97, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976)); Bryant v. Maffucci, 923 F.2d 979 (2d Cir. 1991).

In his O&RR, the magistrate judge concluded that Harrison's tooth pain did not amount to a serious medical need. See Order and Report-Recommendation at 7-9. Harrison objects to this conclusion and argues that defendants' actions caused him "considerable pain." Pl.'s Objections, Dkt. No. 39 [*7] at 3.

In reaching his recommendation, the magistrate judge credited the testimony of Dr. S. Mirza, the dentist who ultimately filled Harrison's cavity. Order and Report-Recommendation at 8. Dr. Mirza testified that, based on his examination, the cavity was not capable of producing serious pain. Mirza Aff., Dkt. No. 22 at PP 5-11. Based partially on this testimony, the magistrate judge concluded that even if Harrison experienced tooth pain, it did not rise to the level of a "serious medical need." Moreover, if Harrison's pain was serious, it is unlikely he would have continued to oppose Dr. Hoehn's advice. I agree with the magistrate judge's recommendation on this issue, however, it is unnecessary to reach a conclusion concerning the level of Harrison's pain since I also find that defendants are qualifiedly immune.

Government officials performing discretionary functions are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727, (1982). The immunity accorded defendants by [*8] this doctrine protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 89 L. Ed. 2d 271, 106 S. Ct. 1092 (1986). It is well established that in some cases a denial of medical care constitutes a violation of the Eighth Amendment. See Estelle, 429 U.S. at 105-06 (stating that only deliberate indifference, and not "an inadvertent failure to provide adequate medical care," is sufficient to allege a violation of the Eighth Amendment in the medical context).

Defendants are entitled to qualified immunity in this case because they demonstrated that the particular factual circumstances made it "objectively reasonable" for them to believe that their actions were lawful. Rodriguez v. Phillips, 66 F.3d 470, 475 (2d Cir. 1995). The DOC's policy is to treat a prisoner's most serious medical conditions first. Pl.'s Mem., Dkt. No. 25, Ex. A. Dr. Hoehn, based on his medical judgment, identified Harrison's most serious medical condition and recommended that action be taken to correct that problem. Harrison refused this medical advice. It is well established that a prisoner has no right to choose a specific form of medical treatment. [*9] Garcia, 919 F. Supp. at 615. Moreover, even if it was negligent of defendants to insist on treating Harrison's most serious medical need first, mere negligence in treatment does not support Harrison's claim that defendants violated his rights. See Brown v. Coombe, 1996 WL 507118 (N.D.N.Y. 1996).

Therefore, I find that Harrison failed to establish that defendants were deliberately indifferent to his medical needs and that any factual dispute concerning this conclusion is adequately covered by the doctrine of qualified immunity.

Because I grant defendants' summary judgment motion, Harrison's remaining objections are denied as moot.

Based on the foregoing discussion, it is

ORDERED, that Harrison's motion for partial summary judgment is **DENIED**, and it is further

ORDERED, that defendants' motion for summary judgment is **GRANTED** in its entirety, and it is further

ORDERED, that the magistrate judge's O&RR is **APPROVED** and **ADOPTED**, as set forth herein.

IT IS SO ORDERED.

Dated: April 11, 1997

Syracuse, New York

ROSEMARY S. POOLER

United States District Judge