

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DALLAS COBBS, #164276,

Plaintiff,

NO. 2:07-cv-14644

v

HON. ANNA DIGGS TAYLOR
MAG. CHARLES E. BINDER

GEORGE PRAMSTALLER, DR. HARESH PANDYA,
MARCELLA CLARK, DR. GREGORY NAYLOR,
DR. WALTER ORMES, DR. BONITA NEIGHBORS, *et al.*,

Defendants.

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MDOC DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Michigan Department of Corrections (MDOC) Defendants Pramstaller, Naylor, Pandya, Clark, and Neighbors, by counsel, move under Fed R Civ P 56(b) for summary judgment. On February 26, 2008, Plaintiff Cobbs was approved for cataract extraction on his left eye, rendering moot his claims for injunctive relief. On April 14, 2008, Cobbs underwent the cataract surgery of his left eye. MDOC Defendants now ask this Court to grant this motion in their favor and dismiss them from this suit. This motion is based on Fed R Civ P 56(b) and the other grounds set forth in the accompanying brief. Concurrence in this motion was sought via email to Plaintiff's counsel and was denied.

Respectfully submitted,

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Dated: September 12, 2008

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**BRIEF IN SUPPORT OF MDOC
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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Dated: September 12, 2008

CONCISE STATEMENT OF ISSUES PRESENTED

I. Plaintiff alleges deliberate indifference based on failure to provide him with cataract surgery in his left eye. He has now received the surgery to remove that cataract. He has not placed verifying medical evidence into the record showing a detrimental effect of the delay in treatment. Has plaintiff failed to show an Eighth Amendment violation?

**Defendant's answer: Yes
Plaintiff's answer: unknown**

II. Plaintiff has received a cataract extraction on his left eye. Are his requests for injunctive relief now moot?

**Defendant's answer: Yes
Plaintiff's answer: unknown**

III. Plaintiff has shown only a disagreement over the course of care provided. At most, he has shown a delay in treatment not resulting in injury. Are Defendants entitled to qualified immunity?

**Defendant's answer: Yes
Plaintiff's answer: unknown**

STANDARD OF REVIEW

A defendant is entitled to judgment as a matter of law, with or without supporting affidavits, in the absence of a genuine issue of material fact.¹ Once the moving party discharges his burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party, who may not rest on his pleadings but, instead, must present specific facts showing a genuine triable issue.² The nonmoving party is not entitled to a trial merely on the basis of allegations, but must come forward with some significant probative evidence to support its claim.³ "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."⁴

The party opposing summary judgment cannot rest on its pleadings or merely reassert its previous allegations. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts."⁵ Rather, Rule 56(e) "requires the nonmoving party to go beyond the pleadings" and present some type of evidentiary material in support of its position.⁶ Ultimately, the Court must determine whether the evidence "is so one-sided that one party must prevail as a matter of law."⁷

¹ FRCP 56(b).

² FRCP 56(e).

³ *Celotex Corp v Catrett*, 477 US 317 (1986).

⁴ *Anderson v Liberty Lobby, Inc*, 477 US 242, 252 (1986).

⁵ *Matsushita Elec Indus Co v Zenith Radio Corp*, 475 US 574, 586 (1986).

⁶ *Celotex*, 477 US at 324; *see also Harris v Gen Motors Corp*, 201 F3d 800, 802 (CA 6, 2000).

⁷ *Anderson*, 477 US at 251-52; *see also Atchley v RK Co*, 224 F3d 537, 539 (CA 6, 2000).

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Prison officials are forbidden from "unnecessarily and wantonly inflicting" pain on an inmate by acting in "deliberate indifference" toward the inmate's serious medical needs.⁸ A prison official cannot be found liable under the Eighth Amendment unless the official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference."⁹

"[A]n inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment to succeed."¹⁰

Mere disagreement with medical staff's prescriptions does not state a claim for violation of the Eighth Amendment.¹¹

A case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. Mootness results when events occur during the pendency of a litigation that renders the court unable to grant the requested relief.¹²

The defense of qualified immunity is available to a state actor unless three criteria are met: a constitutional violation has occurred; the violated right was a clearly established right of which a reasonable person would have known; and the plaintiff has alleged sufficient facts, and supported the allegations by sufficient evidence, to indicate that what the official allegedly did was objectively unreasonable.¹³

⁸ *Estelle v Gamble*, 429 US 97, 104 (1976).

⁹ *Farmer v Brennan*, 511 US 825, 837 (1994).

¹⁰ *Napier v Madison County*, 238 F3d 739, 742 (CA 6, 2001).

¹¹ *Estelle*, 429 US at 104-06.

¹² *Carras v Williams*, 807 F2d 1286 (CA 6, 1986).

¹³ *Saucier v Katz*, 533 US 194, 201-02 (2001); *Higgason v Stephens*, 288 F3d 868, 876-77 (CA 6, 2002); *Williams v Mehra*, 186 F3d 685, 690 (CA 6, 1999).

STATEMENT OF THE FACTS

Plaintiff Dallas Cobbs #164276 is an inmate confined at the Ryan Road Correctional Facility (RRF) within the Michigan Department of Corrections (MDOC). He alleges that his Eighth Amendment rights were violated when he was denied cataract surgery in his left eye. Undersigned counsel represents Defendants Pramstaller, Clark, Naylor, Ormes, Neighbors, and Pandya.¹⁴

In August 2004, the plaintiff had cataract surgery on his right eye. [Amended Complaint, ¶ 21]. He claims that his doctor had also recommended surgery on his left eye. [Amended Complaint, ¶ 22]. He also alleges that his request for surgery was denied by the Medical Services Advisory Committee (MSAC) on October 26, 2004. [Amended Complaint, ¶ 24]. He was told that the surgery was denied by CMS. [Amended Complaint, ¶ 26].

On February 26, 2008, the MSAC held a meeting; at that meeting, the plaintiff's cataract was one of the agenda items. Due to the continuing development of the cataract, the MSAC recommended approval of cataract surgery for the plaintiff's left eye. An outside consultation request was created on March 10, 2008, approving the plaintiff for "cataract extraction left eye with Dr. Dastgir," as well as two post-operation follow-up examinations with Dr. Dastgir. The plaintiff underwent an A & B scan of his left eye on April 7, 2008.¹⁵ Dr. Dastgir performed the

¹⁴ Plaintiff's counsel has agreed to dismiss Defendant Ormes from this action.

¹⁵ According to en.wikipedia.org, the purpose of the A-scan is to determine eye length for calculation of intraocular lens power. Briefly, the total refractive power of the emmetropic eye is approximately 60. Of this power, the cornea provides roughly 40 diopters, and the crystalline lens 20 diopters. When a cataract is removed, the lens is replaced by an artificial lens implant. By measuring both the length of the eye (A-scan) and the power of the cornea (keratometry), a simple formula can be used to calculate the best fit of intraocular lens. There are several different formulas that can be used depending on the actual characteristics of the eye. The other major use of the A-scan is to determine the size and ultrasound characteristics of masses in the eye, in order to determine the type of mass. This is often termed quantitative A-scan. A B-scan provides a clinical assessment of a variety of ocular and orbital diseases. With understanding of the indications for ultrasound and proper examination technique, one can gather a vast amount of information not possible with clinical examination alone.

plaintiff's cataract surgery on April 14, 2008. Since the surgery, Plaintiff has had at least three follow up appointments with Dr. Dastgir, one on April 15, 2008, one on April 22, 2008, and the next on April 29, 2008.¹⁶

ARGUMENT

I. The plaintiff cannot show that cataract surgery was medically necessary prior to the recent approval of the surgery by the MSAC. In addition, he cannot show that he has been harmed by the delay in receiving the surgery.

Prison officials are forbidden from "unnecessarily and wantonly inflicting" pain on an inmate by acting in "deliberate indifference" toward the inmate's serious medical needs.¹⁷ Mere disagreement with medical staff's prescriptions, however, does not state a claim for violation of constitutional rights.¹⁸

Deliberate indifference "entails something more than mere negligence" or gross negligence.¹⁹ A prison official cannot be found liable under the Eighth Amendment unless the official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference."²⁰

To reach the level of a constitutional violation, a deprivation "must result in the denial of 'the minimal civilized measure of life's necessities.'"²¹ The Eighth Amendment is only concerned with "deprivations of essential food, medical care, or sanitation" or "other conditions intolerable for prison confinement."²² "[N]ot every unpleasant experience a prisoner might

¹⁶ Def Ex A, "Affidavit of Elizabeth Tate".

¹⁷ *Estelle v Gamble*, 429 US 97, 104 (1976).

¹⁸ *Estelle*, 429 US at 104-06.

¹⁹ *Farmer v Brennan*, 511 US 825, 835 (1994); *Walker v Norris*, 917 F2d 1449, 1454 (CA 6, 1990); *McGhee v Foltz*, 852 F2d 876, 880-81 (CA 6, 1988).

²⁰ *Farmer*, 511 US at 837.

²¹ *Rhodes v Chapman*, 452 US 337, 347 (1981); *see also Wilson v Yaklich*, 148 F3d 596, 600-01 (CA 6, 1998).

²² *Rhodes*, 452 US at 348.

endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment."²³

"[A]n inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment to succeed."²⁴ "[T]he 'verifying medical evidence' requirement is relevant to those claims involving minor maladies or non-obvious complaints of a serious need for medical care."²⁵

In *Napier*, the prisoner did not complain about missing treatment; he told the prison guards that missing a treatment was "no big deal"; he missed over forty treatment sessions of his own accord; and he neither sought immediate medical attention upon his release nor even attended his next scheduled treatment.²⁶ The facts in *Blackmore* differed in that the plaintiff there "did not suffer from a long-term and well monitored illness, but rather exhibited obvious manifestations of pain and injury. [He] complained of 'sharp' and 'severe' stomach pains for an extended period of time."²⁷ The Court held that the plaintiff's "classic signs of appendicitis" made the need for care so obvious that he did not need to submit verifying medical evidence to avoid summary judgment.²⁸

The plaintiff here has shown no more than a disagreement over the prescribed course of care. He had cataract removal performed on his right eye. Based on the results of that surgery, a decision was made that cataract extraction to the left eye was not required. Due to changing

²³ *Ivey v Wilson*, 832 F2d 950, 954 (CA 6, 1987).

²⁴ *Blackmore v Kalamazoo County*, 390 F3d 890, 898 (CA 6, 2004) [quoting *Napier v Madison County*, 238 F3d 739, 742 (CA 6, 2001)].

²⁵ *Blackmore*, 390 F3d at 898.

²⁶ *Napier*, 238 F3d at 741.

²⁷ *Blackmore*, 390 F3d at 899.

²⁸ *Blackmore*, 390 F3d at 900.

circumstances, the plaintiff received approval for cataract extraction on his left eye and the surgery was performed on April 14, 2008.

But even if the plaintiff could show more than disagreement over the course of care prescribed, at most, he can show only a delay in receiving care. And he has placed no verifying medical evidence in the record tending to show that he suffered any injury as a result of the delay in cataract extraction. Although the plaintiff claims to have suffered diminished vision in his right eye due to the delay, it is unclear that a cataract could be the cause of such a condition or that it was the cause of such condition in the plaintiff. In addition, there is no way of knowing whether that condition would revert to normal after successful removal of the left-eye cataract. The defendants are entitled to summary judgment.

A. The plaintiff's requests for injunctive relief are moot.

Article III of the United States Constitution limits federal court jurisdiction to a 'case or controversy'; this provides the basis for principles of mootness.²⁹ "If a case becomes moot, it does not satisfy the 'case or controversy' requirement of Article III, and the federal courts are powerless to decide it."³⁰ As explained by the United States Court of Appeals for the Sixth Circuit, "[a] case is moot when the issues presented are no longer 'live,' or the parties lack a legally cognizable interest in the outcome."³¹

The plaintiff has been approved for and has received cataract extraction to his left eye. Further, the plaintiff has received post surgical care following his cataract surgery.³² To the extent that the plaintiff is requesting injunctive relief in the form of follow-up medical care, his request is moot.

²⁹ US Const art III, § 2.

³⁰ *Carras v Williams*, 807 F2d 1286, 1289 (CA 6, 1989) [citing *SEC v Medical Committee for Human Rights*, 404 US 403, 407 (1972) and *United States v City of Detroit*, 720 F2d 443, 448 (CA 6, 1983)].

³¹ *Carras v Williams*, 807 F2d at 1289 [quoting *Powell v McCormack*, 395 US 486, 496 (1969)].

³² Def Ex A.

B. Defendant Pramstaller, Clark, Naylor, Neighbors, and Pandya are entitled to qualified immunity.

Officials or employees of the Michigan Department of Corrections who are sued in their individual capacities "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."³³

In *Saucier v Katz*, the Supreme Court set forth a two-prong test to determine whether a defendant is entitled to qualified immunity.³⁴ First, a court must consider whether the facts of the case, viewed in the light most favorable to the plaintiff, "show the officer's conduct violated a constitutional right."³⁵ If so, the court must then decide "whether the right was clearly established."³⁶ "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation that he confronted."³⁷

The Court also reiterated that a ruling on qualified immunity "should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive"³⁸ Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation" and is "an immunity from suit rather than a mere defense to liability."³⁹ A court's first inquiry, taken in the light most favorable to the party claiming the injury, is whether the facts alleged show the officer's conduct violated a constitutional right.⁴⁰ If a violation could be made out on a favorable view of the parties' submissions, the next, sequential step "is to ask whether the right

³³ *Harlow v Fitzgerald*, 457 US 800, 818 (1982).

³⁴ *Saucier*, 533 US 194 (2001).

³⁵ *Saucier*, 533 US at 201.

³⁶ *Saucier*, 533 US at 201.

³⁷ *Saucier*, 533 US at 201.

³⁸ *Saucier*, 533 US at 200.

³⁹ *Saucier*, 533 US at 201.

⁴⁰ *Saucier*, 533 US at 201.

was clearly established" and "this inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition."⁴¹

In *Siegert v Gilley*, the United States Supreme Court held that prior to determining whether a right is clearly established and prior to entertaining summary judgment where qualified immunity has been asserted, a court must first determine "whether the plaintiff has asserted a violation of a constitutional right at all."⁴² As a threshold matter, "[t]he plaintiff must plead facts which, if true, describe a violation of a clearly established statutory or constitutional right of which a reasonable public official, under an objective standard, would have known. The failure to so plead, precludes a plaintiff from proceeding further, even from engaging in discovery."⁴³ The standard to be applied in deciding a claim of qualified immunity is one of objective reasonableness.⁴⁴ The question of whether qualified immunity attaches to an official's actions is a purely legal issue for the trial court.⁴⁵

The plaintiff is unable to show anything more than a disagreement over the course of care prescribed to him. Furthermore, he has not demonstrated, through medical evidence, that he suffered any harm as a result of the delay from the time the right eye was operated on until now. The plaintiff's constitutional rights were not violated. Additionally, the defendants have found no case law indicating that delay in providing cataract surgery could amount to deliberate indifference. The plaintiff's clearly established constitutional rights have not been violated, and the defendants are entitled to qualified immunity.

⁴¹ *Saucier*, 533 US at 201.

⁴² *Siegert v Gilley*, 500 US 226, 232 (1991).

⁴³ *Dominque v Telb*, 831 F2d 673, 676 (CA 6, 1987) (citing *Mitchell v Forsyth*, 472 US 511 (1985)); *Gomez v Toledo*, 446 US 635 (1980); and *Harlow*, 457 US at 818.

⁴⁴ *Dickerson v McClellan*, 101 F3d 1151, 1157-58 (CA 6, 1996).

⁴⁵ See *Pouillon v City of Owosso*, 206 F3d 711, 718 (CA 6, 2000); *Summar v Bennett*, 157 F3d 1054, 1057 (CA 6, 1998); *Dominque v Telb*, 831 F2d 673, 677 (1987).

CONCLUSION AND RELIEF SOUGHT

The plaintiff cannot show an Eighth Amendment violation because he can show nothing more than disagreement over the prescribed course of care or, at most, a delay in receiving treatment. He has not submitted verifying medical evidence to show that a delay in treatment could have caused him any harm or that he suffered any harm and no Sixth Circuit authority could be found for the proposition that delay in removing a cataract could equate to deliberate indifference. The plaintiff's various requests for injunctive relief are moot because he has received cataract extraction surgery in his left eye and has had follow up care post surgery. Defendants Pramstaller, Clark, Naylor, Neighbors, and Pandya respectfully request that the Court grant their Motion for Summary Judgment and dismiss them from this action.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that on September 12, 2008, the foregoing paper was presented and uploaded to the United States District Court ECF System which will send notification of such filing to the attorneys of record listed herein and I hereby certify that a copy of this same document(s) was mailed by US Postal Service to any involved non-ECF participant.

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