

UNITED STATES DISTRICT COURT  
FOR THE 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, AND  
DR. BONITA NEIGHBORS, *et al.*,

Defendants.

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**DEFENDANTS PRAMSTALLER, NAYLOR, PANDYA, CLARK, AND NEIGHBORS'S  
REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Michael A. Cox  
Attorney General

*s/ Clifton Schneider*  
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CLIFTON SCHNEIDER (P70582)  
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Date: October 27, 2008

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**CONCISE STATEMENT OF ISSUES PRESENTED**

- I. The 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 the plaintiff failed to show an Eighth Amendment violation?**

**Defendants' answer: Yes**

**Plaintiff's answer: No**

- II. The 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 the defendants entitled to qualified immunity?**

**Defendants' answer: Yes**

**Plaintiff's answer: No**

### STATEMENT OF THE FACTS

The plaintiff alleges that his Eighth Amendment rights were violated due to a delay in receiving cataract surgery. Defendants Pramstaller, Naylor, Pandya, Clark, and Neighbors filed a motion for summary judgment on September 12, 2008. [D/E #66]. The plaintiff filed a response on October 16, 2008. [D/E #71]. The defendants now file this reply to the plaintiff's response.

Though the plaintiff's response may contain other inaccuracies, at least one error is deserving of address. The plaintiff alleges that his left-eye surgery was not approved until after the "defendants were notified that Mr. Cobbs had retained counsel to represent him." [D/E #71, pages 5-6]. In fact, the plaintiff was approved for cataract surgery on his left eye at the February 26, 2008, MSAC meeting. It was not until March 24, 2008, that a University of Michigan law student contacted counsel for the MDOC defendants and indicated that the Law Clinic would be representing the plaintiff here. Prior to that date, defense counsel was contacted by a student from the Law Clinic expressing an interest in the case, but it was made clear that no plans existed at that time to represent the plaintiff in this case.

### ARGUMENT

- I. **The plaintiff's Eighth Amendment rights were not violated because he was not injured by a delay in cataract removal, because disagreement over the course of care prescribed does not show a constitutional violation, and because he did not have a serious medical condition requiring treatment during the timeframe at issue in this suit.**

In his response, the plaintiff relies on an affidavit<sup>1</sup> from a medical doctor for the proposition that had he been outside of prison, he would have had cataract surgery on his left eye back in 2004. [D/E #71, pages 8-9]. Despite the questionable nature of this assertion, even if

accepted, the level of care available to free persons is not the standard for measuring the level of care constitutionally required to be provided to prisoners. As discussed in the defendants' motion (D/E #66), deliberate indifference is the standard by which the defendants' conduct must be measured here. The defendants were not constitutionally required to act in accordance with a schedule set by the plaintiff; rather, they were entitled to rely on their medical judgment to determine that the plaintiff did not suffer from any serious medical need requiring treatment during the timeframe in question in this suit. The plaintiff had good vision in his right eye, and there was no medical urgency requiring immediate surgery in the left eye. The plaintiff was not denied treatment; he was provided with a course of care that included operating on one eye and not the other. The plaintiff has since been provided with the second surgery, and he cannot show that he was injured by the delay. The defendants are entitled to summary judgment because the plaintiff cannot show that the objective and subjective prongs of deliberate indifference are met in this case.

## **II. The defendants are entitled to qualified immunity.**

As discussed above, the plaintiff has not shown that he's suffered a constitutional violation. As the plaintiff has failed at the first prong of the qualified-immunity analysis, the defendants are entitled to qualified immunity. Furthermore, the other prongs are also in favor of the defendants.

The qualified immunity "inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition."<sup>2</sup> As argued in their motion (D/E #66), the defendants have found no case holding that a delay in care similar to that here is a

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<sup>1</sup> The plaintiff has provided only an unsigned, un-notarized copy of the affidavit with his response; a footnote indicates that a signed copy is on file, but it does not indicate why a copy of that document could not be filed with the response.

<sup>2</sup> *Saucier v Katz*, 533 US 194, 201 (2001).

violation of a prisoner's constitutional rights; and the timeframe between the right-eye surgery and the left-eye surgery can only be called a "delay" if it is accepted that the plaintiff had a serious medical need requiring attention during the timeframe relevant to this suit. But the plaintiff had vision in his right eye, and he has not suffered any injury from the "delay"; it is apparent that he did not have a serious medical need for surgery on his left eye at any time relevant to this lawsuit. There is no clearly established law informing the defendants that their conduct was unconstitutional; therefore, the defendants are entitled to qualified immunity.

**CONCLUSION AND RELIEF SOUGHT**

Defendants Pramstaller, Naylor, Pandya, Clark, and Neighbors respectfully request that the Court grant their motion for summary judgment (D/E #66).

Respectfully submitted,

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Attorney General

*s/ Clifton Schneider*  
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Date: October 27, 2008

**CERTIFICATE OF SERVICE**

I certify that on **May 27, 2008**, I electronically filed **DEFENDANTS PRAMSTALLER, NAYLOR, PANDYA, CLARK, AND NEIGHBORS'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT and CERTIFICATE OF SERVICE** with the Clerk of the Court using the ECF system.

*s/ Clifton Schneider*  
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