

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

NORMAN LAURENCE, JR.

v.

C.A. NO. 08-109 ML

A.T. WALL, ET AL.

REPORT AND RECOMMENDATION

Jacob Hagopian, Senior United States Magistrate Judge

Plaintiff, Norman Laurence, Jr., *pro se*, an inmate at the Adult Correctional Institutions (the “ACI”) in Cranston, Rhode Island, filed a complaint (the “Complaint” or “Cmpt.”) in the instant action under 42 U.S.C. §§ 1983 & 1985 (“§1983” & “§1985”, respectively) (Docket # 1). Plaintiff alleges that 65 defendants (ACI wardens, supervisors, correctional officers, and legal and medical personnel as well as state police officers and prosecutors) violated his civil rights.

Presently before the Court is a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (the “Federal Rules”) filed by defendant Doctor Friedman (“SMJ”) (Docket # 195). Plaintiff filed an objection to the motion (“Obj.”) (Docket # 198). This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) for a report and recommendation. For the reasons set forth below, I recommend that defendant Dr. Freidman’s instant motion be GRANTED.

BACKGROUND

In the Complaint, Plaintiff alleges that various defendants have subjected him to electronic surveillance via cameras concealed in the light fixtures in his cells as well as listening devices in the library and yard. Plaintiff claims that such defendants use the surveillance devices to watch him perform bodily functions and engage in legal work, and then taunt and harass him with the information they obtain. Plaintiff further alleges that various defendants have (i) impeded Plaintiff’s access to the courts by, *inter alia*, denying him legal materials and copies, spying on his legal work, and interfering with his legal mail; (ii) passed around a psychological evaluation of Plaintiff and harassed Plaintiff with the contents thereof; and (iii) prevented Plaintiff from receiving adequate mental health care.

Defendant Dr. Friedman, the Rhode Island Department of Corrections Director of Behavioral Health and one of Plaintiff’s treating psychologists at the ACI, is referred to only

once in the allegations in the Complaint. Specifically, the Complaint alleges that Dr. Friedman and others used the ACI High Security Center and D Module as the IMH (presumably the Inmate Mental Hospital) to videotape and laugh at Plaintiff every day. Cmpt. ¶ 72.

The Complaint also includes a number of sweeping allegations against all defendants. Potentially relevant to Dr. Friedman, Plaintiff alleges in the Complaint that from January 2007 until March 12, 2008, the defendants denied him mental health treatment and interfered with his mental health treatment by not seeing him or by telling him that he is delusional. Cmpt. at ¶ 82. Additionally, the Complaint states, “With the assistance of the state police and mental health S.I.U. the defendants released and passed around and used a court ordered psychiatric evaluation to investigate me harass torment and to blackmail and extort me into silence.” Cmpt. at ¶ 70. Finally, Plaintiff alleges that all defendants conspired to use electronic surveillance to deny Plaintiff access to courts (by responding under oath in previous lawsuits that the surveillance devices and the psychiatric evaluation did not exist, by having psychiatrists tell him there are no cameras, and by threatening to expose the tapes of Plaintiff if Plaintiff did not discontinue his legal action). Cmpt. at p. 2 & ¶ 71 & ¶ 73.

UNDISPUTED FACTS

It is undisputed that Plaintiff was an ACI inmate at the time of the incidents alleged in the Complaint and that Dr. Friedman was the RIDOC Director of Behavioral Health and one of Plaintiff’s treating psychologists at the ACI, Statement of Undisputed Facts (Docket # 196), ¶¶ 1 & 2. Further, it is undisputed that, although the expert witness disclosure date specified in the Pretrial Order has passed, Plaintiff has not identified any expert who will testify that Dr. Friedman breached the applicable standards of care with respect to Plaintiff’s mental health care. *Id.* at ¶¶ 7-8. On the other hand, Dr. Friedman has identified an expert as well as himself who are both prepared to testify that Dr. Friedman and his staff met or exceeded the applicable standards of care in treating Plaintiff. *Id.* at ¶¶ 9-11.

DISCUSSION

I. Summary Judgment Standard

Summary judgment’s role in civil litigation is “to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1st Cir. 1990) (citation omitted). Summary judgment can only be granted when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of

law.” Fed.R.Civ.P. 56(c). “A ‘genuine’ issue is one that could be resolved in favor of either party, and a ‘material fact’ is one that has the potential of affecting the outcome of the case.” *Calero-Cerezo v. United States Dept. of Justice*, 355 F.3d 6, 19 (1st Cir. 2004)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50, 106 S.Ct. 2505 (1986)). In considering a motion for summary judgment, the Court reviews all evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in favor of the nonmoving party. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997).

Summary judgment involves shifting burdens between the moving and the nonmoving parties. Initially, the moving party is required to aver “an absence of evidence to support the nonmoving party’s case.” *Garside*, 895 F.2d at 48 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548 (1986)). After such a showing has been made, the burden shifts to the nonmovant to demonstrate, by presenting specific facts, that a trialworthy issue remains. *Cadle Co.*, 116 F.3d at 960. The nonmoving party “may not rest upon mere allegation ... but must set forth specific facts showing that there is a genuine issue for trial.” *Braga v. Hodgson*, 605 F.3d 58, 60 (1st Cir. 2010)(quoting *Anderson*, 477 U.S. at 250).

II. No Genuine Issue As To Any Material Fact Demonstrating That Defendants Violated Plaintiff’s Rights

Here, the Complaint asserts, pursuant to § 1983 and state law, that Dr. Friedman violated Plaintiff’s rights by failing to provide him with adequate mental health care. Further, reading the Complaint liberally, the Complaint also asserts § 1983 claims that defendant Dr. Friedman violated Plaintiff’s rights under the First, Fourth, Eighth, and Fourteenth Amendments by (i) invading Plaintiff’s privacy with electronic surveillance and disclosure of his psychiatric evaluation; (ii) impeding Plaintiff’s access to courts by denying the existence of surveillance devices under oath in a previous litigation, telling Plaintiff there were no cameras, and/or threatening Plaintiff to discontinue his litigation; and (iii) subjecting Plaintiff to cruel and unusual punishment by harassing him with information garnered from the electronic surveillance and psychiatric reports. Plaintiff also alleges that all defendants conspired to deny Plaintiff access to courts in violation of § 1985.

In his Motion for Summary Judgment, defendant Dr. Friedman avers that Plaintiff has not demonstrated any evidence to support his claims against Dr. Friedman and that Dr. Friedman is entitled to judgment as a matter of law.

A. Claims Under § 1983 (and State Law Negligence Claims)

To state a claim under § 1983, the complaint must set forth allegations indicating that the conduct complained of (i) was committed by a person acting under color of state law and (ii) deprived the plaintiff of a constitutional or federal statutory right. *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S.Ct. 1920 (1980). Here, the issue is whether defendant Dr. Friedman deprived Plaintiff of any constitutional right.

1. Inadequate Medical Care

Plaintiff's primary claim against Dr. Friedman is that Dr. Friedman provided inadequate medical care to Plaintiff. In order to show that medical care was so inadequate as to constitute cruel and unusual punishment under the Eighth Amendment, a Plaintiff must demonstrate that (i) he has an objectively serious medical need involving a substantial risk of serious harm if not properly treated and (ii) the prison official had subjective awareness of his need and consciously disregarded the substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S.Ct. 1970, 1979 (1994); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292 (1976).

Here, Dr. Friedman has introduced viable evidence, in the form of proffered expert testimony, that the medical care he and his staff provided Plaintiff met the applicable standards of care, and, thus, he did not disregard a substantial risk of serious harm to Plaintiff. Plaintiff has not presented any evidence to genuinely dispute Dr. Friedman's evidence. First, to support his inadequate medical care claim, Plaintiff submits his own affidavit describing, *inter alia*, sessions (and the length of time between sessions) he had with Dr. Friedman and other ACI mental health staff members as well as the diagnosis of "delusional" he received on numerous occasions. Obj., Attachment # 1 (Affidavit of Norman Laurence, Jr. ("Plaintiff's Affidavit")). However, the descriptions in Plaintiff's Affidavit, without any medical expert opinion, do not indicate inadequate medical care.

Additionally, Plaintiff's attempt to use Dr. Friedman as his medical expert also fails. Plaintiff urges that the correctional officers are listening to his sessions with mental health workers and discussing the information. *See e.g.*, Obj., at p. 4; Plaintiff's Affidavit, at pp. 1,2, 4 & 6. He points to answers to interrogatories in which Dr. Friedman states that it would be improper or unnecessary for correctional officers to (i) listen to Plaintiff talk to mental health workers about certain issues; (ii) use Plaintiff's mental health treatment in an investigation; or (iii) tell other inmates or a nurse what Plaintiff discloses to mental health workers. Obj., Attachment (Defendant Dr. Friedman's Answers to Plaintiff Norman Laurence, Jr.'s

Interrogatories (“Dr. Friedman’s Interrog. Answers”), Nos. 16, 17, 19, 22, & 23. However, Dr. Friedman qualifies each of his foregoing responses by stating that he has no reason to believe that any of the unprofessional actions occurred. *Id.* Further, Plaintiff provides only his own assumptions and bald assertions or hearsay to show that correctional officers were listening to his mental health sessions and discussing the information with others. *See* Plaintiff’s Affidavit. Although Plaintiff cites various letters and doctors’ progress reports indicating that Plaintiff previously complained about the correctional officers’ alleged misbehavior in connection with his mental health care, *see e.g.*, Obj., at p. 10 & Attachments (RIDOC Psychiatrist Progress Notes dated 2/1/05), the fact that Plaintiff made similar assumptions and bald assertions in the past does not provide evidence that such allegations are true. Finally, Plaintiff presents no evidence that Dr. Friedman was involved in, encouraged, or specifically permitted the alleged improper actions by correctional officers. To the contrary, Plaintiff submits interrogatory answers in which Dr. Friedman specifically denies awareness that correctional officers tape record Plaintiff’s mental health sessions. Dr. Friedman’s Interrog. Answers, No. 13.

Accordingly, I find that Plaintiff has failed to demonstrate that a trialworthy issue remains regarding his Eighth Amendment claim against Dr. Friedman for inadequate medical care. I recommend that Dr. Friedman’s Motion for Summary Judgment be granted with respect to such claim.

Additionally, to the extent a liberal reading of the Complaint suggests a negligence claim against Dr. Friedman for inadequate medical care, such claim also fails. Expert testimony is required in medical negligence cases, such as here, where a lack of adequate care is not obvious to a lay person. *See Sheeley v. Memorial Hospital*, 710 A.2d 161, 164 (R.I. 1998). However, Plaintiff has not provided, and as expert discovery has closed, will not be able to provide, any expert testimony rebutting the expert testimony offered by Dr. Friedman. Accordingly, I recommend that Dr. Friedman’s Motion for Summary Judgment be granted with respect to any negligence claim against him in the Complaint.

2. Other Constitutional Claims

Plaintiff has also failed to provide any evidence indicating trialworthy issues remain regarding the other Constitutional claims he asserts against Dr. Friedman. The Complaint alleges that Dr. Friedman invaded Plaintiff’s privacy, impeded Plaintiff’s access to courts, and harassed Plaintiff by using electronic surveillance and/or circulating Plaintiff’s psychiatric

evaluation. However, Plaintiff provides no evidence whatsoever of Dr. Friedman's involvement with any electronic surveillance or the alleged circulation of Plaintiff's psychiatric evaluation.

Accordingly, I find that Plaintiff has failed to demonstrate that a trialworthy issue remains regarding his First, Fourth, Eighth, and Fourteenth Amendments claims against Dr. Friedman for invasion of privacy, denial of access to courts, and harassment. I further find that Dr. Friedman is entitled to judgment as a matter of law on such claims and recommend that Dr. Friedman's Motion for Summary Judgment be granted with respect to such claims.

B. Claims Under § 1985

Plaintiff also asserts jurisdiction in this case under §§ 1985(2) and (3), regarding conspiracies to interfere with judicial proceedings or deprive any person or class of persons of the equal protection of the laws. 42 U.S.C. §§ 1985(2) & (3).

Here, the Complaint alleges that, presumably in connection with prior litigation involving Plaintiff, all defendants conspired with a RIDOC attorney to deny under oath the existence of surveillance devices and the psychiatric evaluation in order to conceal defendants' abuse of Plaintiff with such items. Cmpt. at p. 2, ¶ 71 & ¶ 73. However, as described in the Report and Recommendation issued on April 2, 2009 (Docket # 81), Plaintiff's allegations fail to state claims under either §§ 1985(2) or (3), and Plaintiff has not submitted evidence supporting his § 1985 claims. Specifically, Plaintiff has not alleged or presented evidence showing that Dr. Friedman: (i) deterred a party or witness from attending or testifying in federal court; (ii) injured the person or property of a party or witness attending or testifying at a federal judicial proceeding; (iii) influenced a verdict of a juror in a federal proceeding; or (iv) injured the person or property of a juror as a result of the verdict in the federal proceeding, as is necessary to succeed on a claim under the first clause of § 1985(2). 42 U.S.C. §§ 1985(2). Similarly, Plaintiff has neither alleged nor submitted evidence that Dr. Friedman conspired with others against Plaintiff because of Plaintiff's membership in an invidiously-defined class of persons, as is required to succeed on claims under both the second clause of § 1985(2) and under § 1985(3). *See Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790 (1971)(regarding § 1985(3)); *Hahn v. Sargent*, 523 F.2d 461, 469 (1st Cir. 1975)(regarding § 1985(2)).

Accordingly, there are no genuine issues as to any material fact regarding Plaintiff's § 1985 claims, and Dr. Friedman is entitled to judgment as a matter of law with respect to such claims. I therefore recommend that Dr. Friedman's Motion for Summary Judgment be granted with respect to the § 1985 claims against him in the Complaint.

CONCLUSION

In summary, I find that Dr. Friedman has shown that there are no genuine issues as to any material facts, and that he is entitled to judgment as a matter of law, with respect to the claims asserted against him in the Complaint under §§ 1983 & 1985 and state negligence law. Accordingly, I recommend that Dr. Friedman's Motion for Summary Judgment be GRANTED and Dr. Friedman be DISMISSED as a defendant in this action.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed.R.Civ.P. 72(b); LR Cv 72(d). Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia-Copete*, 792 F.2d 4, 6 (1st Cir. 1986)(per curiam); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Jacob Hagopian
Jacob Hagopian
Senior United States Magistrate Judge
October 12, 2010