

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130534-U

NO. 4-13-0534

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 4, 2014

Carla Bender

4th District Appellate

Court, IL

MATTHEW JOHNSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
MICHAEL RANDLE, DR. LOUIS SHICKER, DR. JOHN SHEPARD, DR. JILL WAHL, DR. JOHN GARDNER,)	No. 10MR668
HENRIETTA MELVIN, JESSICA BLAND, TERRI BRYANT, RANDY DAVIS, MELODY FORD, SHERRY BENTON, JACKIE MILLER, CHRISTINE BROWN,)	Honorable
WEXFORD HEALTH SOURCES, INC., AND DR. DENNIS LARSON,)	John P. Schmidt and
Defendants-Appellees.)	Leo J. Zappa, Jr.,
)	Judges Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court (1) did not abuse its discretion when it recused itself after ruling on the motions to dismiss, (2) did not abuse its discretion in not appointing counsel, and (3) properly dismissed plaintiff's complaint.

¶ 2 In August 2010, plaintiff filed a six-count complaint under section 1983 of the Civil Rights Act of 1871 (Civil Rights Act) (42 U.S.C. § 1983 (2006)) against defendants Michael Randle, Dr. Louis Shicker, Dr. John Shepard, Dr. Jill Wahl, Dr. John Gardner, Henrietta Melvin, Jessica Bland, Terri Bryant, Randy Davis, Melody Ford, Sherry Benton, Jackie Miller, Christine Brown, Wexford Health Sources, Inc., and Dr. Dennis Larson, alleging they violated his rights under the eighth amendment (U.S. Const., amend. VIII). (We note plaintiff included James Sledge and Dr. Olukunle Obadina as defendants in his six-count complaint, but the record reflects Sledge and Dr. Obadina were never served or entered an appearance.) Defendants filed

several motions to dismiss plaintiff's complaint on the grounds he failed to state a cause of action and he failed to exhaust administrative remedies. In October 2011, the trial court granted defendants' motions to dismiss.

¶ 3 Plaintiff appeals and contends the trial court erred in dismissing his complaint. Specifically, he argues (1) the first trial judge abused his discretion because he failed to recuse himself before dismissing the complaint, (2) the court abused its discretion by failing to rule on his motion for appointment of counsel, and (3) his complaint properly stated a cause of action. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2010, plaintiff filed a six-count complaint under section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2006)) against defendants, alleging they violated his rights under the eighth amendment (U.S. Const., amend. VIII). Plaintiff alleged defendants violated the eighth amendment because they (1) fed him too much soy, (2) did not properly treat a spider bite, (3) failed to bring him medication in a timely manner, (4) failed to properly treat a foot infection, (5) failed to treat an injured knee, and (6) failed to provide him with Sensodyne toothpaste.

¶ 6 In March 2011, defendants Brown, Davis, Bryant, Benton, Miller, and Randle filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2010)). Pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)), the motion argued plaintiff had failed to state a cause of action for an eighth amendment violation because (1) he had not pleaded defendants acted with deliberate indifference; (2) plaintiff, by his own allegations, received medical treatment and merely

disagreed with the treatment; and (3) he did not specify which defendants the individual counts were against. Pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)), the motion argued plaintiff's complaint was barred because he had failed to exhaust his administrative remedies as required by section 1997e(a) of the Prison Litigation Reform Act (42 U.S.C. § 1997e(a) (2006)), and his claims for injunctive relief were barred by sovereign immunity.

¶ 7 In June 2011, defendants Larson, Shepherd, Wahl, Melvin, and Wexford Health Sources, Inc., filed a combined motion to dismiss pursuant to section 2-619.1 of the Code. The motion made arguments consistent with those in the March 2011 motion to dismiss.

¶ 8 In September 2011, defendants Gardner and Bland filed a motion to dismiss counts III and VI of plaintiff's complaint. The motion made arguments consistent with those made in the March 2011 motion to dismiss.

¶ 9 In October 2011, the trial court, Judge John P. Schmidt presiding, held a hearing on defendants' motions to dismiss. Pursuant to section 2-619 of the Code, the court dismissed plaintiff's complaint. On November 16, 2011, plaintiff filed a motion to reconsider. Plaintiff appealed the dismissal to this court. In June 2012, this court dismissed the appeal because the motion to reconsider had never been decided. *Johnson v. Randle*, No. 4-12-0351 (June 18, 2012) (dismissed on motion of appellee).

¶ 10 In August 2012, the trial court disclosed it had a potential conflict with Andrew Ramage, attorney for defendants Gardner and Bland. In September 2012, the case was reassigned to Judge Leo J. Zappa, Jr.

¶ 11 In April 2013, Judge Zappa held a hearing on plaintiff's motion to reconsider. In

May 2013, Judge Schmidt signed an order denying the motion to reconsider. In June 2013, Judge Zappa entered an order denying the motion to reconsider and noted Judge Schmidt had "inadvertently signed" the May 2013 order.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff contends the trial court erred in dismissing his complaint. Specifically, he argues (1) the first trial judge abused his discretion because he failed to recuse himself before dismissing the complaint, (2) the court abused its discretion by failing to rule on his motion for appointment of counsel, and (3) the court improperly dismissed his complaint for failing to state a cause of action. We address plaintiff's contentions in turn.

¶ 15 A. Plaintiff's Argument About the Judge's Recusal

¶ 16 Plaintiff asserts Judge Schmidt abused his discretion because he failed to recuse himself before ruling on the motions to dismiss because he was biased against plaintiff and knew there was a possible conflict with attorney Andrew Ramage. Specifically, plaintiff contends Judge Schmidt was biased against him because (1) of "possibly" improper *ex parte* communication, (2) the docket entry states he requested recusal when he did not, and (3) the judge failed to rule on several of his motions. In his statement of facts, plaintiff adds the judge cut him off when he was trying to explain his case during a telephone conference. Plaintiff's arguments are unpersuasive.

¶ 17 A trial judge's recusal decision is reviewed for an abuse of the judge's discretion. *Barth v. State Farm Fire & Casualty Co.*, 228 Ill. 2d 163, 175, 886 N.E.2d 976, 983 (2008). A judge has an obligation to disqualify him or herself "when a reasonable person might question

the judge's ability to rule impartially." *Id.* at 176, 886 N.E.2d at 983. "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *** A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality. [Citation.] Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant." *Eychaner v. Gross*, 202 Ill. 2d 228, 280, 779 N.E.2d 1115, 1146 (2002).

¶ 18 Plaintiff failed to meet his burden of showing Judge Schmidt was not impartial. He has offered no facts about when or with whom the trial court may have engaged in an *ex parte* communication. Consistent with *Eychaner*, the allegedly erroneous docket entry and the judge's failure to rule on certain motions does not show personal bias against plaintiff. There is no merit to plaintiff's contention the judge was biased because he cut plaintiff off during a telephone conference. See *Id.* at 281, 779 N.E.2d at 1147 (" 'judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge' ") (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 19 Further, plaintiff has not shown Judge Schmidt knew of a conflict between him and Ramage at the time he ruled on the motions to dismiss in October 2011. Plaintiff asserts, "based on information and belief," the judge knew of the potential conflict in October 2011 because—10 months later—in August 2012, he disclosed Ramage was part of his "reelection" campaign. (We note Judge Schmidt was running for election, not reelection.) However, plaintiff fails to account for the 10-month gap between the ruling and the disclosure or offer facts showing Ramage was involved with the election campaign in October 2011. As Gardner and

Bland point out, Judge Schmidt did not file a candidacy application until November 2011.

¶ 20 B. Plaintiff's Argument About His Motion for Appointment of Counsel

¶ 21 Plaintiff appears to assert the judge should have appointed counsel because the law library at Pinckneyville Correctional Center does not (1) have a licensed paralegal, (2) supply items such as envelopes and ink pens, or (3) have a law clerk. He also complains about the restrictions on his access and movement around the law library.

¶ 22 In Illinois, a trial court is not required to appoint counsel to represent an indigent prisoner in a case alleging deprivation of a prisoner's civil rights. *Tedder v. Fairman*, 92 Ill. 2d 216, 227, 441 N.E.2d 311, 315 (1982). Plaintiff's argument about the law library's conditions and policies is not a basis to conclude the court abused its discretion by not appointing counsel to represent him.

¶ 23 C. Plaintiff's Argument He Stated an Eighth Amendment Violation

¶ 24 Plaintiff argues his complaint adequately alleged a violation of his eighth amendment rights. Generally, plaintiff argues he adequately alleged such a violation because the evidence will prove his claims and show the provided medical treatment, or lack thereof, has caused him extreme pain and discomfort.

¶ 25 In *Estelle v. Gamble*, 429 U.S. 97, 103 (1976), the United States Supreme Court held the eighth amendment requires states to provide medical care to inmates in its custody. To state a cause of action under the eighth amendment for failure to provide medical care, "a plaintiff must show (1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent." *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). A serious medical condition does not include "every ache and pain or medically

recognized condition involving some discomfort"; rather, it is one (1) diagnosed by a physician as requiring treatment, or (2) so obvious a layperson would easily recognize the necessity for medical attention. *Gutierrez v. Peters*, 111 F.3d 1364, 1372-73 (7th Cir. 1997). "Deliberate indifference is not medical malpractice"; rather, it requires the official to (1) know of and disregard an excessive risk to the inmate's health or (2) be aware of facts from which an inference of a substantial risk of serious harm exists and draw the inference. *Duckworth*, 532 F.3d at 679.

¶ 26 *1. Plaintiff's Excessive-Soy-Consumption Claim*

¶ 27 Plaintiff alleged the meals he received contained more than 25 grams of soy, which caused him to consume large amounts of soy and suffer pain and discomfort. Although plaintiff alleged his soy consumption caused "injuries," he did not specify what type of injuries it caused him. Further, he alleged Dr. Shepard performed an allergy test, which showed he did not have a soy allergy.

¶ 28 Plaintiff's allegations fail to show he suffers from an objectively serious medical condition. He has not alleged a physician has diagnosed him with requiring medical treatment for his soy consumption. Indeed, as he alleged, medical tests showed he did not have a soy allergy. Nor is the harm posed by excessive soy consumption so obvious a layperson would recognize the necessity for medical attention. As defendants point out, federal regulators have found soy consumption to be healthy. Further, plaintiff's allegations fail to show defendants acted with deliberate indifference. Plaintiff's complaint about the high-soy diet does not mean defendants knew of any risks of a high-soy diet and ignored them; or defendants were aware of facts showing a high-soy diet posed a substantial risk of serious harm. See generally *Munson v.*

Gaetz, 957 F. Supp. 2d 951, 954-55 (S.D. Ill. 2013) (collecting cases rejecting prisoners' claims about high-soy diets).

¶ 29 *2. Plaintiff's Delay-of-Medication Claim*

¶ 30 Plaintiff alleged he failed to receive a pain medication for 45 days, which left him in pain. It is difficult to understand plaintiff's allegations; it appears he alleged medical staff "normally" notified him before his medication ran out, but twice this did not occur and he was forced to go without his medication until the refill came.

¶ 31 Plaintiff has not alleged medical staff acted with deliberate indifference to cause the delay in his medication. Plaintiff's allegations suggest the delay was caused by the procurement process and not any deliberate withholding of medication by medical staff. Further, plaintiff alleged the pain medication did not "really" stop the pain, which is inconsistent with an allegation the delay caused excessive risk or serious harm to his health.

¶ 32 *3. Plaintiff's Claims About Various Medical Treatments*

¶ 33 Plaintiff made several claims about various medical ailments—an alleged spider bite, foot infection, pain in his knee, and gum disease. For each one of these claims plaintiff alleged he received some form of medical treatment: antibiotics for the alleged spider bite; nystatin and triamcinolone for the foot infection; he saw doctors "several times" about his knee; and he saw a dentist about his dental problems, who prescribed various medications.

¶ 34 "[T]he Constitution is not a medical code that mandates specific medical treatment." *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996). The eighth amendment "does not require that prisoners receive 'unqualified access to health care.'" *Johnson v. Doughty*, 433 F.3d 1001, 1013 (7th Cir. 2006) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). Rather, prisoners

"are entitled to only 'adequate medical care.' " *Id.* (quoting *Boyce v. Moore*, 314 F.3d 884, 888 (7th Cir. 2002)). Generally, a prisoners' dissatisfaction or disagreement with the course of his medical treatment does not give rise to a constitutional claim. *Id.*; *Snipes* 95 F.3d at 592.

¶ 35 Plaintiff's claims are merely complaints about the level of medical care provided to him or the decisions medical staff made in the course of his medical treatment. Plaintiff, by his own allegations, received medical treatment for his various ailments. The fact he disagrees with the decisions and course of treatment does not state an eighth amendment violation.

¶ 36 D. Defendants' Argument Plaintiff Failed To Exhaust Administrative Remedies

¶ 37 As we have concluded his allegations do not state a cause of action for an eighth amendment violation, we need not address defendants' arguments plaintiff failed to exhaust administrative remedies before filing this suit.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the trial court's judgment.

¶ 40 Affirmed.