

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Wane v. Korkor

Wane v. Korkor · No. 1:22-cv-00813-JLT-BAM (PC) · Decided March 14, 2023

OPINION

(PC) Wane v. Korkor

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 IBRAHIMA WANE, No. 1:22-cv-00813-JLT-BAM (PC)

12 Plaintiff, ORDER ADOPTING IN PART AND

DECLINING TO ADOPT IN PART

13 v. FINDINGS AND RECOMMENDATIONS TO

DISMISS ACTION FOR FAILURE TO

14 KORKOR, et al., STATE A CLAIM 15 Defendants. (Doc. 17) 16 17 The assigned magistrate
judge screened the first amended complaint and issued findings 18 and recommendations that this
action be dismissed for failure to state a cognizable claim upon 19 which relief may be granted.
(Doc. 17.) The Court directed Wane to file objections, if any, within 20 14 days, but the plaintiff
did not. (Id.) 21 According to 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo
review of this 22 case. Having carefully reviewed the entire file, the Court ADOPTS in part and
REJECTS in 23 part the findings and recommendations. 24 Wane’s first amended complaint
asserts claims for the denial of right to medical care, Due 25 Process,¹ and freedom from cruel
and unusual punishment. (Doc. 15 at 3-4.) His claims arise from 26 1 Because it is undisputed that
Wane is a convicted prisoner, not a pretrial detainee, the Court analyzes his claims under the
Eighth Amendment rather than the Fourteenth Amendment’s Due Process Clause. See Mendiola-
Martinez 27 v. Arpaio, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016); see also Russell v. Lumitap, 31
F.4th 729, 738 (9th Cir. 2022) (“[C]laims brought by pretrial detainees under the Fourteenth
Amendment should not necessarily be evaluated under 28 the same standard as claims brought by
convicted prisoners under the Eighth Amendment.”). 1 allegations involving the health care
treatment he received at the California Substance Abuse and 2 Treatment Facility. (Id. at 2.) Wane
alleges that on June 9, 2017, he was seen by his primary care 3 physician, Dr. W. Korkor, for the
pain, swelling, and lumps discharging fluid out of his breasts. 4 (Id. at 3.) Dr. Korkor diagnosed
the problem as stemming from Wane’s medication prescribed by 5 his mental health provider, Dr.

Y. Chain. (Id. at 4.) Dr. Korkor told Wane that he needed medical 6 treatment for his condition and referred him to Dr. Chain. (Id. at 3-4.) Dr. Chain discontinued 7 Wane's medication (Celexa), but both Dr. Chain and Dr. Korkor said nothing could be done 8 about his current condition. (Id.) Wane alleges that he now has female breasts that leak due to the 9 Celexa medication. (Id. at 4.) Wane asserts claims against Dr. Korkor, Dr. Chain, and Warden 10 Cisneros. (Id. at 2-3.) 11 To the extent Wane brings a claim against Warden Cisneros under a supervisory liability, 12 the Court agrees with the magistrate judge's findings that the complaint does not contain 13 sufficient facts to maintain that claim. Wane alleges that "systemic deficiencies in staffing, 14 facilities, or procedures which make unnecessary suffering inevitable constitute deliberate 15 indifference to prisoners' medical needs," and "the use of untrained personnel to medical decision 16 [sic] is a system deficiency in staffing." (Doc. 15 at 9.) As concluded in the findings and 17 recommendations, these conclusory statements do no suffice to plead an Eighth Amendment 18 claim for supervisory liability. (See Doc. 17 at 4-5.) Wane has not stated any specific facts to 19 allege Dr. Chain's or Dr. Korkor lack the necessary medical training. Accordingly, the Court 20 ADOPTS the magistrate judge's findings with respect to Warden Cisneros. 21 Regarding Wane's claims against Dr. Chain and Dr. Korkor, the first amended complaint 22 arguably sets forth two theories of Eighth Amendment liability for inadequate medical care: (1) 23 for Dr. Chain's initial prescribing of the Celexa medication that allegedly caused the injuries and 24 (2) for the failure by either doctor to treat the injury after the condition arose. (Doc. 17 at 3-4.) To 25 state a claim under the Eighth Amendment for inadequate medical case, the prisoner must show 26 that the mistreatment rises to the level of "deliberate indifference to serious medical needs" to 27 constitute cruel and unusual punishment. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) 28 (internal quotations omitted). The two-part test for Eighth Amendment inadequate medical care 1 requires the plaintiff to show (1) "a serious medical need by demonstrating that failure to treat a 2 prisoner's condition could result in further significant injury or the unnecessary and wonton 3 infliction of pain" and (2) "the defendant's response to the need was deliberately indifferent." Id. 4 (internal quotations omitted). As to the first step, the Court agrees with the findings and 5 recommendations that Wane's breast pain and leakage constitute a serious medical need at the 6 pleading stage. (See Doc. 17 at 6-7.) 7 The more difficult question involves the second step of the analysis. To the extent that 8 Wane claims deliberate indifference by Dr. Chain for having initially prescribed him the Celexa 9 medication, the Court agrees that this theory does not provide a valid claim for relief. To proceed 10 on a claim that a medical professional violated the Eighth Amendment for having chosen a 11 prescription that caused negative side effects, the plaintiff must plead a "culpable mental state" 12 when prescribing the medication. See *Murillo v. Thornton*, 2008 WL 110899, at *4 (S.D. Cal. Jan. 13 9, 2008). In other words, the medical professional must have known that this inmate was at a 14 particularized risk for the resulting side effect. See *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th 15 Cir. 2004); see also *Thomas v. Antipov*, 2015 WL 641446, at *12 (E.D. Cal. Feb. 12, 2015),

16 report and recommendation adopted, 2015 WL 1345307 (E.D. Cal. Mar. 20, 2015), modified on 17 reconsideration, 2015 WL 1801346 (E.D. Cal. Apr. 16, 2015) (“Under Toguchi, Ma’s decision to 18 prescribe Tylenol # 3 cannot constitute deliberate indifference if Ma did not believe that the 19 medication presented a serious risk of harm to plaintiff.”). Even construing Wane’s allegations to 20 include a failure to warn him of the potential side effects, courts have consistently held that this 21 amounts, at most, to medical malpractice or professional negligence but not deliberate 22 indifference. See *Burgess v. Mar*, 395 F. App’x 368, 368-69 (9th Cir. 2010); *Williams v. CDCR*, 23 2015 WL 6669816, at *5 (E.D. Cal. Oct. 29, 2015) (“Failure to advised [sic] Plaintiff of the 24 negative side-effects of a medication . . . may constitute, at the most medical malpractice—which 25 is a form of professional negligence.”). Negligence in “diagnosing or treating a medical condition 26 does not state a valid claim of medical mistreatment under the Eighth Amendment.” *Estelle v. 27 Gamble*, 429 U.S. 97, 106 (1976). Accordingly, the Court ADOPTS the magistrate judge’s 28 findings that Dr. Chain’s initial decision to prescribe Celexa does not state a valid Eighth 1 Amendment claim. 2 However, the Court finds the theory that Dr. Chain and Dr. Korkor were deliberately 3 indifferent to Wane’s serious medical need by providing no treatment after his breast condition 4 developed, meets the pleading standard. Prison officials demonstrate deliberate indifference when 5 they are aware of the patient’s condition but deny, delay or intentionally interfere with medical 6 treatment. *Estelle*, 429 U.S. at 104. Wane made Dr. Chain and Dr. Korkor aware of the ongoing 7 pain, swelling, and leaking of his breasts. (Doc. 15 at 3-4.) Both medical professionals informed 8 him that there was nothing they could do, despite Dr. Korkor’s conclusion that Wane needed 9 medical treatment. (Id.) Their refusal to provide any medical care may constitute deliberate 10 indifference to a serious medical need. See *Figueroa v. Ryan*, 703 F. App’x 540, 540-41 (9th Cir. 11 2017) (reversing district court’s dismissal of medical deliberate indifference claim where plaintiff 12 alleged he told defendants “that he was suffering complications and side effects from his 13 medications, and that [defendants] refused to help”); *Townsend v. Hemela*, 2021 WL 3737467, at 14 **4-5 (E.D. Cal. Aug. 24, 2021), report and recommendation adopted, 2021 WL 4263062 (E.D. 15 Cal. Sept. 20, 2021) (denying dismissal where plaintiff made repeated requests and complaints 16 about the side effects of his medication but the defendant medical professional refused to change 17 or reduce the dosage of plaintiff’s medication). 18 Arguably, Dr. Chain provided at least some medical care by discontinuing the Celexa 19 medication. (Doc. 15 at 4.) On the other hand, a liberal construction of Wane’s allegations 20 suggests a knowing disregard of an ongoing serious medical need because Wane alleges his pain 21 and symptoms are “recurrent,” even after discontinuing use of Celexa. (Doc. 15 at 6); see 22 *Bradford v. Kvichko*, 2017 WL 6730408, at *4 (E.D. Cal. Dec. 29, 2017) (finding deliberate 23 indifference sufficiently pled where defendant failed to provide medical care despite knowing of 24 plaintiff’s sever chest pain and blurred vision, a side effect of his medication). After discovery, 25 the evidence may reveal that Dr. Chain’s and Dr. Korkor’s decision not to treat the swollen and 26 painful lumps in Wane’s

breasts was a medically acceptable course of treatment under the 27 circumstances. See *Toguchi*, 391 F.3d at 1058. However, at the pleading stage, the allegations that 28 both doctors chose simply not to provide any medical treatment for Wane’s ongoing painful 1 | condition satisfies the pleading standard that they failed “to respond to a prisoner’s pain or 2 | possible medical need” and that indifference caused harm. See *Wilhelm vy. Rotman*, 680 F.3d 3 } 1113, 1122 (th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096). Thus, the Court DECLINES to 4 | adopt the recommendation to dismiss the claims against Dr. Chain and Dr. Korkor on this basis. 5 | Accordingly, the Court ORDERS: 6 1. The findings and recommendations issued on December 28, 2022, (Doc. 17), are 7 ADOPTED in part and REJECTED in part. 8 2. Wane’s claims against Warden Cisneros are DISMISSED, with prejudice, for failure 9 to state a cognizable claim upon which relief may be granted. 10 3. Wane’s claims against Dr. Chain based upon his initial prescribing of the Celexa 11 medication are DISMISSED, with prejudice, for failure to state a cognizable claim 12 upon which relief may be granted. 13 4. This case SHALL proceed only on Wane’s Eighth Amendment claims for failure to 14 treat his side effects caused by the Celexa medication. 15 5. This action is referred to the magistrate judge for further proceedings. 16 7 IT IS SO ORDERED. 1g | Dated: _Mareh 14, 2023 Charis [Tourn
TED STATES DISTRICT JUDGE
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