VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-00548

Joseph Bruyette v Nicholas Deml et al

Opinion and Order on Defendant's Motion for Summary Judgment

Plaintiff, who is under the care and supervision of the Department of Corrections (DOC), has filed suit alleging that DOC has not provided appropriate medical care for his conditions. DOC has moved for summary judgment. Plaintiff has not filed an opposition. The Court makes the following determinations.

Standard

Summary judgment procedure is "an integral part of the . . . Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Morrisseau v. Fayette*, 164 Vt. 358, 363 (1995) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Summary judgment is appropriate if the evidence in the record, referred to in the statements required by Vt. R. Civ. P. 56(c), shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Vt. R. Civ. P. 56(a); *Gallipo v. City of Rutland*, 163 Vt. 83, 86 (1994). In assessing a motion for summary judgment, the Court views all facts and indulges all inference in favor of the non-moving party. *Price v. Leland*, 149 Vt. 518, 521 (1988).

A party opposing summary judgment may not simply rely on allegations in the pleadings to establish a genuine issue of material fact. Instead, it must come forward with deposition excerpts or affidavits to establish such a dispute. *Murray v. White*, 155 Vt. 621, 628, (1991). If the non-moving party will bear the burden of proof at trial, the moving party may be entitled to summary judgment if the non-moving party is unable to come forward with evidence supporting its case. *Poplaski v. Lamphere*, 152 Vt. 251, 254–55 (1989).

In this instance, Plaintiff has not submitted an opposing statement of disputed facts that would warrant a trial. Accordingly, per Rule 56(e)(2), the Court accepts the Defendant's statement of undisputed facts as established for purposes of this motion.

Discussion

DOC argues that Plaintiff cannot meet an essential element of his case because he lacks any expert evidence that can establish that DOC failed to provide him with appropriate medical care. It maintains that the deadline for such expert disclosures has come and gone without Plaintiff naming an expert or seeking an extension of the time for naming such an expert. The Court agrees with Defendant.

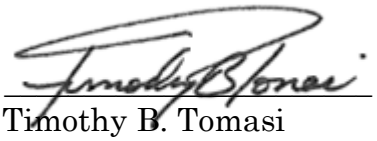
DOC is required to "provide health care for inmates in accordance with the prevailing medical standards." 28 V.S.A. § 801(a). An essential element of Plaintiff's case, then, is to establish the prevailing medical standard as delineated by the Legislature in 12 V.S.A. § 1908 and that DOC's care failed to meet that standard. *Jones v. Block*, 171 Vt. 569, 569 (2000). The Supreme Court has

consistently ruled that establishing the medical standard of care and its breach typically requires reliance on expert evidence. *Id.*; *Begin v. Richmond*, 150 Vt. 517, 520 (1988) ("Ordinarily, these elements must be proved by expert testimony."); *Larson v. Candlish*, 144 Vt. 499, 502 (1984); ("normally the burden of proof imposed by 12 V.S.A. § 1908 will be satisfied only by expert testimony"). The High Court has noted an exception to this rule only where the medical standard of care and the failure to adhere to it are so obvious and extreme that they would be able to be determined solely by lay testimony. *See Larson*, 144 Vt. at 502; *Senesac v. Assocs. in Obstetrics & Gynecology*, 141 Vt. 310, 313.

Here, Plaintiff has submitted no expert testimony or contested DOC's version of the facts at issue. Nor has he argued that this is the rare case where no expert testimony is required. Nor would such an argument be successful. Plaintiff suffers from a chronic colon-related illness. DOC has provided him care from medical providers and courses of treatment. Any potential failings in those regards are well beyond the ken of lay jurors to determine without the benefit of expert testimony. *Cf. Crystal Coca-Cola Bottling Co. v. Cathey*, 317 P.2d 1094, 1100 (Ariz. 1957) (jury "does not require the aid of expert medical evidence in order to determine that the discovery of a fly in a mouthful of coca-cola caused the vomiting which immediately followed the discovery").

WHEREFORE, the Defendant's motion for summary judgment is granted.

Electronically signed on Wednesday, March 8, 2023, pursuant to V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge