

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17502
Non-Argument Calendar

D.C. Docket No. 3:16-cv-00017-TJC-MCR

CARLOS RUIZ,

Plaintiff-Appellant,

versus

W. D. RUMMEL,
Chief Health Officer, et al.,

Defendants,

RODRIGO VIVAS,
Chief Health Officer,
DR. GAMA,
Neurologist,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(June 18, 2019)

Before MARTIN, ROSENBAUM and JILL PRYOR, Circuit Judges.

PER CURIAM:

Carlos Ruiz, an inmate at Florida State Prison (“FSP”), appeals from the dismissal without prejudice of his *pro se* 42 U.S.C. § 1983 complaint alleging, as amended, deliberate indifference to his serious medical needs. Now represented by counsel, Ruiz argues that the district court erred in dismissing his amended complaint because he alleged a complete failure to treat his serious medical need. After careful review, we affirm.

I. BACKGROUND

A. Factual History

Ruiz alleged that two doctors, Dr. Rodrigo Vivas and Dr. Carlos Gama, were deliberately indifferent to his serious medical needs based on their failure to treat long-term injuries he received in 2010, while an inmate at Santa Rosa Correctional Institution (“SRCI”). Ruiz suffered severe injuries, including a fracture in his spine and a life threatening skull fracture in his left orbit, after another inmate

attacked him.¹ The long-term consequences of these injuries included numbness on the left side of his body from his rib cage down, numbness in his brain, and related physical pain and impairments. His left leg is atrophied and losing “mass and muscle.” Doc. 14 at 11.² He feels “millions of little needles all over” when he walks, suffers cramps in his left leg, and has begun experiencing new symptoms when he sleeps. *Id.* He wakes up every night feeling like his left leg is wrapped in a tight net, and he feels “stunned” and has to hold onto something for balance so that he will not fall down when he gets out of bed. *Id.* at 19. According to Ruiz, prison officials paid the other inmate to attack him, and they are allowing his condition to continue untreated, in retaliation after he exposed that corrections officers had committed various wrongs and crimes including a murder and conspiracy to commit murder.

After the attack, Ruiz was treated in an outside hospital and, upon his return to the prison, he saw a medical technician. A prison officer named Leonard told a nurse there that Ruiz had a back injury. The nurse referred him to another nurse, Miss Nichols, who gave him ibuprofen for swelling in his back. Ruiz subsequently

¹ We recite the facts as Ruiz has alleged them. On review of a district court’s order on a motion to dismiss, we accept the well-pled allegations in the complaint as true and view them in the light most favorable to the nonmovant, here, Ruiz. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012).

² Citations in the form “Doc. #” refer to numbered entries on the district court’s docket.

filed hundreds of grievances seeking additional medical care and evaluations for his injuries, but all were denied, and no additional treatment was offered to him.

Ruiz was transferred to Reception Medical Center (“RMC”) for eye surgery in March 2012. While there, he complained to Dr. Vivas of numbness in his left side. Vivas ordered x-rays and, when they came back, Vivas told Ruiz that Ruiz had a fracture in his spine. Vivas touched Ruiz on his spine and said, “[t]here is the fracture.” *Id.* at 10. Vivas said the fracture would explain the numbness in Ruiz’s leg, but not in the rest of his left side, so Vivas ordered an MRI and “pricked [him] all over with a needle” to determine the cause of his numbness. *Id.* The MRI revealed nothing. Ruiz contended that the inconclusive MRI following the x-rays showing a spinal fracture was “fishy” and part of a cover-up by the central corrections office. *Id.* He filed additional grievances about the matter and sought to call Vivas as a witness, but Vivas “disappeared” from RMC. *Id.*

Shortly after being seen by Vivas, in May 2012 Ruiz was transferred back to SRCI. Ruiz again complained about the numbness in his left side. Although he repeatedly filed grievances and requests for medical care, no one at SRCI saw him about his condition.

In 2013, Ruiz was transferred to Central Florida Reception Center (“CFRC”) to treat his double vision. There, a Dr. Mendoza told Ruiz that there was “nothing in today[’s] medicine to correct your brain numbness.” *Id.* at 11. She also told

him that he could lose control of the left side of his face. After examining his left leg, she said that it was becoming atrophied and losing muscle mass because he favored the right leg, and it felt like he had a cushion under his foot and needles pricking him all over.

Due to his complaints at CFRC, Ruiz was sent back to RMC. Dr. Gama, a neurologist, reviewed his MRI and found nothing wrong.³ Gama also “used a computer method of inserting a needle” into Ruiz’s leg and lower back to test his reflexes. *Id.* at 13. Ruiz’s “muscles shot up,” and Gama concluded that nothing was wrong with his leg because his muscles were working. *Id.* According to Ruiz, testing his muscles would not explain his numbness.

In July 2015, Ruiz was transferred to FSP, where he saw Vivas again. Vivas had been promoted to Chief Health Officer and was “notably nervous” upon seeing Ruiz that day. *Id.* at 11. Vivas told Ruiz that doctors make mistakes sometimes; he said he would order x-rays and an MRI to try to find out why Ruiz’s left side was numb. Ruiz later learned that the x-rays revealed degenerative disc disease in the same spot as his fracture, but Vivas did not schedule a follow-up appointment. Vivas abruptly left FSP, as he had RMC. Ruiz never received any treatment for his injuries or condition, despite his symptoms worsening over time.

³ It is unclear from the amended complaint whether Dr. Gama ordered a new MRI or simply reviewed the previous one that Dr. Vivas ordered.

B. Procedural History

Ruiz, proceeding *pro se*, filed suit against Vivas and two other defendants, alleging that they violated his constitutional rights when they were deliberately indifferent to his serious medical needs. After filing his complaint, Ruiz moved to proceed *in forma pauperis*. Before ruling on Ruiz's motion to proceed *in forma pauperis*, the district court directed him to file an amended complaint. The court took judicial notice of five lawsuits that Ruiz had brought in federal court that were dismissed as frivolous or malicious or for failing to state a claim. Based on these prior lawsuits, the court found that Ruiz was a "three-strike[]" litigant," so § 1915(g) would require dismissal of the complaint unless Ruiz's allegations showed that he was in imminent danger of serious physical injury. Doc. 12 at 2.

In response to the district court's order, Ruiz filed an amended complaint, this time bringing claims only against Vivas and Gama, after adding the latter as a defendant, and setting forth the factual history described above. To establish imminent danger of serious physical injury, Ruiz explained that he had complained about his pain and numbness nonstop for more than five years, but prison officials disregarded his calls for help. He was in imminent danger of physical injury, Ruiz alleged, because the numbness was permanent and constant and could permanently incapacitate him. Ruiz added allegations that he had developed new symptoms over the previous year, including the cramps and discomfort he suffered when

sleeping or getting out of bed. He asserted that his condition could be remedied, but Vivas's and Gama's cruelty forced him to remain in this miserable condition for life.

In his amended complaint, Ruiz also alleged that prison officials were retaliating against him for a previous civil complaint that exposed their involvement in a murder conspiracy. He alleged that Vivas and Gama were "accomplices" who would not disobey the prison administration's commands and were "incompetent" to properly diagnose him. Doc. 14 at 14. He alleged that they deliberately disregarded his condition and need for medical care, which amounted to a "wanton infliction of pain." *Id.* at 16-17. Ruiz sought declaratory and injunctive relief, prompt medical care, a jury trial, punitive and compensatory damages, and costs.

After Vivas and Gama were served with the amended complaint, they moved to dismiss it for failure to state a claim and for failure to meet the requirements of 28 U.S.C. § 1915(g).

The district court granted the defendants' motions and dismissed Ruiz's amended complaint without prejudice for failure to state a claim for relief. The court assumed that Ruiz had alleged a serious medical need, but it concluded that he had not sufficiently alleged that the defendants were deliberately indifferent to it. The court explained that Ruiz's own allegations showed that the defendants

provided him with treatment and testing when he complained to them. His dissatisfaction with the treatment he received did not amount to a federal constitutional violation. The court ruled that Ruiz had failed to show that the defendants were grossly incompetent or engaged in unnecessary or wanton infliction of pain, even if it was possible that his condition would worsen over time. Because of its conclusion that Ruiz had failed to state a claim, the district court did not address the defendants' alternative argument that the case should be dismissed under § 1915(g).

Following the entry of judgment, Ruiz appealed.

II. STANDARD OF REVIEW

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “[N]aked assertions devoid of further factual enhancement” or “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alterations adopted) (internal quotation marks omitted). Upon our review of a dismissal for failure to state a claim, “[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and are liberally construed.” *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011)

(internal quotation marks omitted). We review *de novo* a district court's dismissal for failure to state a claim under § 1915(e)(2)(B)(ii), applying the same standards that govern dismissals under Rule 12(b)(6). *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008).

III. DISCUSSION

The Eighth Amendment's prohibition against "cruel and unusual punishments" protects prisoners from "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 102, 104 (1976). To prove deliberate indifference, a plaintiff must show: (1) an objectively serious medical need; (2) the defendants' deliberate indifference to that need; and (3) a causal link between the defendants' indifference and the plaintiff's injury. *See Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007). The second of these elements requires the plaintiff to establish that the defendants (1) had subjective knowledge of a risk of serious harm and (2) disregarded that risk (3) by conduct that was more than mere negligence. *Bingham*, 654 F.3d at 1176; *see also Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991) ("Mere incidents of negligence or malpractice do not rise to the level of constitutional violations.").

Conduct that is more than merely negligent includes: "(1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of treatment; and (3) medical care that is so cursory as to amount to no treatment at

all.” *Bingham*, 654 F.3d at 1176. A plaintiff can also establish deliberate indifference by showing “[a] complete denial of readily available treatment,” or that the defendants “delay[ed] necessary treatment for non-medical reasons.” *Id.*

Ruiz contends that the district court erred in dismissing his complaint because he alleged that he received no treatment whatsoever for his serious medical condition. He argues that the medical testing his doctors conducted was not the same as providing medical treatment. He adds that the defendants’ failure to adequately address his condition was gross incompetence that rose to the level of deliberate indifference.

The Supreme Court stated in *Estelle* that “an inadvertent failure to provide adequate medical care” to a prisoner does not amount to an Eighth Amendment violation. 429 U.S. at 105-06. Likewise, we have held that a doctor’s failure to accurately diagnose a prisoner’s condition, even if extremely negligent, did not “cross the line to deliberate indifference.” *McElligott v. Foley*, 182 F.3d 1248, 1256 (11th Cir. 1999).

In some circumstances, the failure to pursue further diagnosis and treatment for a severe medical need may amount to deliberate indifference. *Id.* at 1256-57. We explained in *McElligott* that a “core principle of Eighth Amendment jurisprudence in the area of medical care is that prison officials with knowledge of the need for care may not, by failing to provide care, delaying care, or providing

grossly inadequate care, cause a prisoner to needlessly suffer the pain resulting from his or her illness.” *Id.* at 1257. However, a doctor’s failure to “diligently pursue alternative means of treating” his patient’s condition will not automatically constitute deliberate indifference. *See Adams v. Poag*, 61 F.3d 1537, 1546 (11th Cir. 1995).

We agree with the district court that Ruiz failed to allege facts that were sufficient to state a plausible claim for relief. *See Twombly*, 550 U.S. at 570. We accept that Ruiz alleged a serious medical need: the numbness that he suffered throughout the left side of his body, the pain and difficulty when walking, the atrophy of his leg, the cramps and discomfort when he slept or got out of bed, and the potential for the worsening of his condition. He therefore needed to show that Vivas and Gama were deliberately indifferent to those needs. *See Goebert*, 510 F.3d at 1326. Even liberally construing his allegations, however, we conclude that Ruiz failed to make that showing because he did not establish that the defendants were subjectively aware of the severity of his condition or disregarded it. *See Bingham*, 654 F.3d at 1175.

Ruiz alleged that both Vivas and Gama were aware that he suffered some degree of numbness; he specifically complained of his numbness to Vivas, and both doctors conducted testing to determine its cause. But nowhere in his amended complaint did Ruiz allege that he or anyone else told Vivas or Gama of the severity

of his numbness or any of the associated symptoms. He alleged that he complained of his condition continually and filed countless grievances, but nothing in the amended complaint indicates that Vivas or Gama actually knew of his grievances or his constant complaints. It is not enough that he described Vivas and Gama as “mercenar[ies]” and “accomplices” whose conduct in disregarding his need for treatment was “implicitly knowing and deliberate.” Doc. 14 at 14-16. These allegations only amount to naked, conclusory assertions of the defendants’ complicity in a conspiracy to punish Ruiz; they do not amount to factual matter that makes his claim plausible on its face. *See Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 678.

Ruiz adequately alleged that Vivas was aware that he suffered a spinal fracture and degenerative disc disease. Ruiz’s argument in the district court and on appeal, however, has not been that his doctors failed to treat his fracture or disc disease. Rather, as Ruiz explains, it is the “continuing and increasingly debilitating numbness throughout a significant portion of his body . . . and [his] fruitless quest for treatment of such numbness . . . that is the core of his claims.” Appellant’s Brief at 7. And although Ruiz found it “fishy,” he admitted in his amended complaint that the MRI revealed nothing that would explain his numbness.

Because the results of the testing that Vivas and Gama performed failed to reveal the cause of Ruiz’s numbness, the allegations were insufficient to show that

there was any treatment they could have provided him but refused to do so. Likewise, because the amended complaint does not establish that the defendants knew the severity of Ruiz's numbness or the problems it was causing him, we cannot say that they were aware of the need to pursue further testing or seek an outside opinion. The amended complaint suggests, at most, that Vivas and Gama were negligent for failing to accurately diagnose Ruiz's numbness and treat his symptoms, but not that they were deliberately indifferent for not pursuing further testing or treatment. *See Adams*, 61 F.3d at 1546. Ruiz therefore failed to establish an Eighth Amendment violation, and the district court correctly concluded that his amended complaint failed to state a claim for relief. *See Estelle*, 429 U.S. at 105-06.

Finally, because we affirm the district court's ruling that Ruiz failed to state a plausible claim for relief, we decline to address whether he alleged an imminent danger of serious physical injury, as required to avoid dismissal under 28 U.S.C. § 1915(g).

IV. CONCLUSION

Based on the foregoing, we affirm the dismissal of Ruiz's amended complaint.

AFFIRMED.