[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13435
Non-Argument Calendar

D.C. Docket No. 3:17-cv-00503-TJC-PDB

JOHN MOORE, III,

Plaintiff-Appellant,

versus

G. RAMOS,
Medical Doctor,

Defendant-Appellee.

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

(July 14, 2021)

Before JORDAN, GRANT, and BLACK, Circuit Judges.

PER CURIAM:

John Moore, proceeding *pro se*, appeals the district court's grant of summary judgment against him on his 42 U.S.C. § 1983 action for violations of the Eighth Amendment. Moore contends the district court and magistrate judge erred in denying his motions for assistance from a law student and his motions for appointment of counsel, respectively. He further asserts the district court abused its discretion when it denied his requests for a temporary restraining order (TRO) against certain prison officials and a preliminary injunction that the Florida Department of Corrections (FLDOC) allow him to see a specialist at its regional medical center. He also contends the district court erred in granting Dr. Ramos's summary judgment motion because there are genuine issues of material fact as to the care that Moore received, namely whether Dr. Ramos personally examined him. After review, we affirm in part and dismiss in part.

I. DISCUSSION

A. Appointment of Counsel

1. Proceedings Before Magistrate Judge

A district judge may designate a magistrate judge to hear certain non-dispositive pretrial matters pending before the district judge, which includes motions to appoint counsel. *See* 28 U.S.C. § 636(b)(1)(A) (providing a list of exceptions to the general rule that "a judge may designate a magistrate judge to hear and determine any pretrial matter"). When a non-dispositive pretrial matter is referred to a magistrate judge, a party "may serve and file objections to the order

within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to." Fed. R. Civ. P. 72(a). When a magistrate judge rules on a pretrial matter pursuant to § 636(b)(1)(A), "[a]ppeals from the magistrate's ruling must be to the district court," and we lack jurisdiction to hear appeals "directly from federal magistrates." *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980).[1] More recently, we have applied *Renfro* in cases where a magistrate judge issues a non-dispositive order, a party fails to object to the order, and the same party subsequently appeals from the final judgment. *United States v. Schultz*, 565 F.3d 1353, 1359-62 (11th Cir. 2009).

We are without jurisdiction to consider Moore's challenges to the magistrate judge's orders denying him counsel. Moore did not appeal either of the magistrate judge's orders denying counsel to the district court. Moore's motion to "Hear and Rule on Motion of Counsel" dated July 10, 2017, before the issuance of the magistrate judge's order denying counsel dated July 18, 2017, could not be a challenge to the magistrate judge's order. It is uncontested that the magistrate judge's orders denying Moore counsel were non-dispositive of Moore's case and because he failed to object to the orders in the district court, we lack jurisdiction to review them. *See Schulz*, 565 F.3d at 1359-62; *Renfro*, 620 F.2d at 500.

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

Accordingly, we dismiss Moore's appeal to the extent that he challenges the magistrate judge's orders denying him counsel.

2. Proceedings Before District Judge

At the time Moore moved for assistance from a law student for the limited purposes of discovery depositions, the Local Rules for the Middle District of Florida provided that "[a]n eligible law student . . . may appear and be heard in this Court on behalf of any person found by the Court to be indigent and who consents in writing to such appearance." M.D. Fla. Local R. 2.05(b) (2019). The Local Rules further provided that

> [i]n addition to appearance in Court, . . . [a]n eligible law student may also engage in the conduct of any informal discovery or investigation authorized by the supervising attorney; may participate in reviewing and inspecting discovery materials; and may participate in oral depositions (provided that the supervising attorney shall be present at all depositions).

M.D. Fla. Local R. 2.05(c) (2019).

The district court did not abuse its discretion in denying Moore's request for a law student's assistance. *See Bass v. Perrin*, 170 F.3d 1312, 1319 (11th Cir. 1999) (reviewing the denial of a motion for the appointment of counsel for an abuse of discretion). Moore's motions for assistance from a law student do not identify any eligible law student or a supervising attorney that would have allowed the law student to conduct depositions. To the extent that Moore challenges the district court's denial of his request for law student assistance, we affirm.

B. TRO/Preliminary Injunction

Dr. Ramos is the lone appellee in the instant case, as the rest of the defendants were either dismissed or settled with Moore. Moore sought a TRO against nonparties to the instant appeal, seeking injunctions to receive (1) dental care from a nerve specialist at the FLDOC's regional medical center and (2) physical therapy to restore nerve damage. Because his TRO sought relief from nonparties to the instant appeal, there is no longer a live controversy to which we can provide meaningful relief. *See Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (explaining our jurisdiction is limited to cases and controversies and that "[a]n issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief" (quotations omitted)).

Regarding Moore's requests for a preliminary injunction, Moore did not specifically seek relief from Dr. Ramos,[2] and as Moore explained to the district court, he subsequently went to the FLDOC's regional medical center and received an outside consult with a doctor who evaluated the condition of his nerve damage. Thus, he has received the relief that his injunction sought, and superseding events

[2] In his requests for injunctions, the only express mentions of Dr. Ramos were references to Dr. Ramos's alleged decision not to treat Moore and Moore's disagreement with Dr. Ramos's assessment of the risk of Moore's injury. Moore does not contend on appeal, nor did he argue in the district court, that Dr. Ramos had the authority to allow him to see a specialist outside the FLDOC.

have rendered his requests regarding this issue moot. *See Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1254 (11th Cir. 2001) ("A claim for injunctive relief may become moot if," among other things, "interim relief or events have completely and irrevocably eradicated the effects of the alleged violations." (quotations omitted)). We are, accordingly, without jurisdiction to consider this issue and dismiss it as moot.

C. Summary Judgment

"The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones, and it is now settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citations and quotations omitted). As the Supreme Court stated in *Whitley v. Albers*, "[n]ot every governmental action affecting the interests or well-being of a prisoner is subject to Eighth Amendment scrutiny . . . . After incarceration, only the unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eight Amendment." 475 U.S. 312, 319 (1986) (quotations omitted).

"To show that a prison official acted with deliberate indifference to serious medical needs, a plaintiff must satisfy both an objective and a subjective inquiry." *Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1270 (11th Cir. 2020)

(quotations omitted). "To meet the first prong, the plaintiff must demonstrate an objectively serious medical need," which is a medical need "that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention," and that, "if left unattended, poses a substantial risk of serious harm." *Id*. (quotations omitted). "To satisfy the second, subjective prong, the plaintiff must prove that the prison officials acted with deliberate indifference to his serious medical need." *Id*. (quotations and alteration omitted). "To establish deliberate indifference, a plaintiff must demonstrate that the prison officials (1) had subjective knowledge of a risk of serious harm; (2) disregarded that risk; and (3) acted with more than gross negligence." *Id.* (quotations omitted).

In general, courts are hesitant to conclude that a doctor was deliberately indifferent when the inmate received medical care. *Waldrop v. Evans*, 871 F.2d 1030, 1035 (11th Cir. 1989). For example, a difference of opinion between the prison's medical staff and a prisoner concerning the proper diagnosis or course of treatment, even if it amounts to medical malpractice, is insufficient to support a claim of deliberate indifference. *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991); *Waldrop*, 871 F.2d at 1033. Nevertheless, an inmate's medical treatment may constitute deliberate indifference if it involves "grossly incompetent medical care or choice of an easier but less efficacious course of treatment."

Waldrop, 871 F.2d at 1034-35. A delay in access to medical care that is "tantamount to unnecessary and wanton infliction of pain" can also constitute deliberate indifference. *Adams v. Poag*, 61 F.3d 1537, 1544 (11th Cir. 1995) (quotations omitted).

The district court did not err in granting summary judgment in favor of Dr. Ramos. *See Am. Bankers Ins. Grp. v. United States*, 408 F.3d 1328, 1331 (11th Cir. 2005) (reviewing the resolution of cross-motions for summary judgment *de novo*). The undisputed evidence establishes Dr. Ramos provided medical care to Moore on the same day Moore presented to the emergency room, and thus, any argument that Dr. Ramos delayed providing treatment is meritless. Whether Dr. Ramos personally examined Moore does not create a genuine issue of material fact because the evidence that both parties presented shows Dr. Ramos reviewed Moore's emergency room record and stick figure diagram documenting his injuries when rendering Moore's treatment. Further, Moore does not dispute that Dr. Ramos ordered an x-ray and prescribed pain medication for Moore on the date that Moore presented to the emergency room. Whether other prison officials besides Dr. Ramos withheld Dr. Ramos's prescribed medication does not speak to whether Dr. Ramos was deliberately indifferent to his medical needs when treating him.

Whether Dr. Ramos provided follow-up care to Moore does not implicate the Eighth Amendment because the results of Moore's x-ray do not indicate that

Moore suffered from any fractures and further establishes that Moore's results were "clear" and "unremarkable." The results of his x-ray do not provide any sort of diagnosis from a physician that mandates further treatment. For this same reason, Moore's argument that the x-ray stated that *if* a fracture was suspected, CT was recommended is meritless, as the doctor who reviewed Moore's x-ray stated there was no fracture. Thus, Moore fails to establish either an objectively serious medical need that poses a substantial risk of serious harm or Dr. Ramos's subjective knowledge of such a risk. *See Hoffer*, 973 F.3d at 1270.

The undisputed facts demonstrate that Dr. Ramos provided a course of treatment to Moore, and even if Dr. Ramos were mistaken about the extent of Moore's injury—in light of the course of treatment provided—Dr. Ramos did not disregard any potential risk of serious harm, let alone was he more than grossly negligent in doing so. *See id.* Moore's claims, essentially, constitute a difference in medical opinion as to his diagnosis. *See Harris*, 941 F.2d at 1505; *Waldrop*, 871 F.2d at 1033. Accordingly, we affirm the district court's grant of summary judgment in favor of Dr. Ramos.

II. CONCLUSION

We lack jurisdiction over the magistrate judge's orders denying Moore appointment of counsel. We affirm the district court's denial of Moore's motions for appearance by a law student. We lack jurisdiction over Moore's requests for a

TRO and preliminary injunctions. We affirm the district court's grant of summary judgment in favor of Dr. Ramos.

AFFIRMED IN PART, DISMISSED IN PART.