NOT FOR PUBLICATION

In the United States Court of Appeals For the Eleventh Circuit

No. 25-12557
Non-Argument Calendar

BOBBY L. STEVERSON,

Plaintiff-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Defendants,

ASHLEY UNEY,
ARNP, individual capacity,
D. MILLER,
Dentist, individual capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:22-cv-01462-CEH-AEP

Before LUCK, LAGOA, and MARCUS, Circuit Judges.

PER CURIAM:

Bobby Steverson, a Florida inmate, appeals the district court's order granting nurse Ashley Uney and Dr. Dwayne Miller's motion for summary judgment on Steverson's claim that they violated his Eighth Amendment right to adequate medical care by denying or delaying treatment related to an infection following a tooth extraction. Steverson argues that the district court erred in granting summary judgment because a reasonable jury could have found in his favor and the record contained disputed, material facts. After careful review, we affirm.

I.

The undisputed facts, for purposes of summary judgment, are these. Steverson is a Florida prisoner confined at Hardee Correctional Institution ("HCI"). In February 2021, Steverson complained of a toothache and received a dental filling. His pain continued, and on March 4, the tooth was extracted. Several hours after the extraction, Steverson experienced "seizure type jerks and had a high fever." In the medical department, it was determined that an infection had developed as a result of the extraction. Steverson was given ice packs, pain medication and antibiotics, and he was admitted to the infirmary. The following morning, Steverson was seen by one of the defendants, Dr. Dwayne Miller, a dentist at HCI. Dr. Miller noted swelling to the right side of Steverson's jaw and planned to continue to evaluate him.

On March 9, Steverson saw Dr. Miller and the other defendant, Ashley Uney, a nurse at HCI. Dr. Miller noted that Steverson

continued to have facial swelling and prescribed a liquid diet, antibiotics, ibuprofen, and a painkiller injection. Nurse Uney noted the same and ordered him more antibiotics and pain medications. After this appointment, Steverson saw the defendants or other medical providers sometimes very often and then less frequently when his condition improved -- including about seven times in March; four times in April, twice in May; twice in June and once in August.

Early on, Steverson continued to receive painkillers and antibiotics for swelling and pain, was admitted to the infirmary for another 23-hour observation, and underwent repeated labwork and a CT scan. By March 13, Steverson reported he was feeling better though still in pain; Nurse Uney discussed a request for an oral surgeon but it was denied. By March 26, Stevenson reported less pain though he could not fully open his mouth, so Dr. Miller prescribed him a mechanical diet of soft foods and again discussed a request for an oral surgeon. In early April, Steverson's infection returned, and Nurse Uney ordered more lab work, referred him to a dentist, and consulted with the Regional Medical Director, who suggested a referral to an oral surgeon. Steverson's condition improved again. By mid-April, he reported that his swelling was substantially better and his headache was gone, suggesting they "give it another week before [making] a decision about an oral surgeon," and the swelling and pain returned shortly thereafter.

In May, Dr. Miller noted that Steverson had no swelling but complained of facial numbness and pain when chewing. When Steverson did not further improve by early June, Dr. Miller placed a

consultation request for Steverson to be seen by an oral surgeon, which was eventually approved. In mid-June, Steverson was transferred to a medical center, and on June 29, he was evaluated by an oral surgeon, who noted that Steverson had no swelling and that his numbness was resolving. The oral surgeon recommended continued conservative management and ordered a muscle relaxant, ibuprofen, and a mechanical diet. At a follow-up appointment on August 10, the oral surgeon noted that Steverson's muscle stiffness was resolving and his paresthesia had resolved, and that the plan was to continue conservative management. On September 28, 2021, Steverson was transferred back to HCI.

II.

We review a district court's grant of summary judgment de novo, considering the facts and drawing all reasonable inferences in the light most favorable to the non-moving party. *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009). Although pro se pleadings are liberally construed, "a pro se litigant does not escape the essential burden under summary judgment standards of establishing that there is a genuine issue as to a fact material to his case in order to avert summary judgment." *Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990).

Summary judgment is appropriate only if there is no genuine issue of a material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Mere conclusions, speculation, and unsupported factual allegations are insufficient to defeat a motion for summary judgment. *Ellis v. England*, 432 F.3d

1321, 1326 (11th Cir. 2005); *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). Nor will a mere "scintilla" of evidence supporting the opposing party's position preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion." *Id.* at 247–48. "Factual disputes that are irrelevant or unnecessary" do not preclude the entry of summary judgment, nor does evidence that is "merely colorable." *Id.* at 248, 249–50.

The Eighth Amendment prohibits "deliberate indifference to serious medical needs of prisoners." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "'Federal and state governments have a constitutional obligation to provide minimally adequate medical care to those whom they are punishing by incarceration.'" *Johnson v. Lewis*, 83 F.4th 1319, 1327 (11th Cir. 2023) (citation modified). "Deliberate indifference, however, is a 'steep hill' for a plaintiff to climb." *Id.* (citation modified). "To prevail on a deliberate indifference to serious medical need claim, Plaintiffs must show: (1) a serious medical need; (2) the defendants' deliberate indifference to that need; and (3) causation between the indifference and the plaintiff's injury." *Mann*, 588 F.3d at 1306–07. A government official is deliberately indifferent when he: (1) is subjectively aware of the risk of serious harm to the prisoner; (2) disregards that risk; and (3) is subjectively aware that his action -- or inaction -- puts the prisoner at substantial risk of serious harm. *Wade v. McDade*, 106 F.4th 1251, 1255, 1258 (11th Cir. 2024) (en banc). An official cannot be held

liable under the Eighth Amendment if he had the requisite subjective awareness of the risk to the prisoner but responded reasonably to that risk. *Id.* at 1262.

"[A] simple difference in medical opinion between the prison's medical staff and the inmate as to the latter's diagnosis or course of treatment" does not support a claim of deliberate indifference. *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991); *see Estelle*, 429 U.S. at 107–08. Ordinarily, the failure to administer stronger medication is a medical judgment that is not an appropriate basis for imposing liability. *Adams v. Poag*, 61 F.3d 1537, 1547 (11th Cir. 1995). When a prison inmate has received medical care, courts generally hesitate to find an Eighth Amendment violation. *Waldrop v. Evans*, 871 F.2d 1030, 1035 (11th Cir. 1989).

Here, the parties do not dispute that Steverson's medical needs were serious, so we need only determine whether the defendants were subjectively reckless as to those needs and, if so, whether that indifference caused Steverson's injury. *Mann*, 588 F.3d at 1306–07. Construing the facts in the light most favorable to Steverson, however, the district court did not err in granting summary judgment to the defendants because neither Nurse Uney nor Dr. Miller were deliberately indifferent to his medical needs. Fed. R. Civ. P. 56(a); *Wade*, 106 F.4th at 1255.

As the record reflects, Uney and Miller responded to Steverson's medical condition by repeatedly evaluating and treating his condition when he sought care before ultimately referring him to an oral surgeon. *Wade*, 106 F.4th at 1262; *Mann*, 588 F.3d at 1303.

Indeed, by consistently monitoring his condition and changing medication, diet and treatment as his pain and swelling vacillated over time, ordering frequent labwork and a CT exam, and managing to obtain approval for his transfer and treatment by an oral surgeon -- who did not significantly modify his care plan -- the record shows that Uney and Miller responded reasonably to his medical concerns. This is especially true since Steverson has not put forth evidence to create a genuine issue of fact concerning whether the timeline of his treatment was unreasonable. As we've said many times, a plaintiff's mere disagreement with his treatment plan is not sufficient to support his claim of cruel and unusual punishment. *See Estelle*, 429 U.S. at 107–08; *Harris*, 941 F.2d at 1505; *Adams*, 61 F.3d at 1547. Thus, on this record, neither defendant can be held liable under the Eighth Amendment. *Waldrop*, 871 F.2d at 1033; *Wade*, 106 F.4th at 1262. And because Steverson failed to establish that Uney and Miller were deliberately indifferent to his serious medical needs, he necessarily failed to show the causation element required for a deliberate indifference claim. *See Mann*, 588 F.3d at 1306–07.

Moreover, to the extent Steverson argues that he has identified genuine issues of material fact in the record, his argument fails. In deciding issues on appeal, we consider only the evidence that was part of the record before the district court. *Selman v. Cobb Cnty. Sch. Dist.*, 449 F.3d 1320, 1332 (11th Cir. 2006). Thus, to the extent Steverson attaches several exhibits to his appellate brief that were not before the district court to point out inconsistencies -- including the defendants' responses to Steverson's interrogatories, the

Google search results related to numbness and dental infections, the defendants' responses to Steverson's production requests, and Steverson's unsworn declaration -- we cannot consider them. *Id*.

In any event, even if this evidence was properly before us, Steverson fails to establish that there is a genuine issue of material fact in this case. He relies on statements by Dr. Miller and Nurse Uney that they do not recall certain details of his treatment in their responses to interrogatories, but they do not create necessarily contradictory inconsistencies with the summary judgment record. *See Anderson*, 477 U.S. at 249–50 (explaining that evidence that is "merely colorable" but "not significantly probative" does not create a genuine issue of material fact for trial). Indeed, whether or not they told Steverson that he would see an oral surgeon or receive certain medications sooner than he actually did, the record still demonstrates that they provided reasonable care in response to his complaints. *Wade*, 106 F.4th at 1262.

Accordingly, the district court did not err in granting defendants' motion for summary judgment because Steverson failed to meet his burden to show that there were genuine issues of material fact, and we affirm. *Brown*, 906 F.2d at 670.

AFFIRMED.