

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 23-CV-05082

Bernard Carter v Commissioner Vermont Department of Corrections et al

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment Judgment (Motion: 5)
Filer: Pamela Eaton
Filed Date: August 15, 2025

The motion is GRANTED.

Petitioner Bernard Carter has filed the present Rule 75 action seeking a determination that Respondent Commissioner of the Vermont Department of Corrections and other officials (collectively the “Department”) have violated the duty of care owed to him under 28 V.S.A. § 801 and an order granting him injunctive relief in the form of a mandated MRI test and certain medications.

Petitioner Carter filed his complaint in December of 2023. The parties engaged in discovery through 2024 and early 2025. On April 4, 2025, the Court granted the parties stipulated schedule to complete discovery on or before June 16, 2025 and to allow dispositive motion practice to begin after August 15, 2025.

Based on this schedule, the window for discovery has now closed, and the Department has filed a motion for summary judgment. Petitioner has not retained or disclosed an expert witness, and he has not responded to the Department’s motion or filings.

Undisputed Material Facts

Based on Petitioner’s failure to oppose Defendants’ statement of material facts, the Court finds that Defendants’ statement of material facts, which were filed consistent with V.R.C.P. 56(c)(1), are undisputed for the purposes of the present motion. *Caldwell v. Champlain College, Inc.*, 2025 VT 17, ¶ 9 (“[F]ailure to file a separate statement of additional material facts means the Court need not consider any facts outside of [moving party’s] statement . . .”).

The Department's undisputed statement of material facts recounts in detail Petitioner's history of chronic back pain. Paragraphs 1 through 20 details how Petitioner's condition was treated at the Northern State Correctional Facility by the staff physician's assistant, C. LeBlanc, who states that he treated Petitioner multiple times between February and May of 2023. C. LeBlanc describes Petitioner's condition as back pain/sciatica and notes that Petitioner managed through various medication, primarily Celebrex. Mr. LeBlanc describes Petitioner's condition at this time as stable, controlled, and managed. Mr. LeBlanc states that Petitioner did not have "red flag" symptoms that would have warranted either an MRI or a higher-level of treatment.

The other portion of the Department's undisputed statement of material facts concerns Petitioner's condition and treatment at the Tallahatchie County Correctional Facility in Mississippi where he was moved in the summer of 2023 and currently is held. Dr. D. Thomas, who was Petitioner's treating physician during this time details Petitioner's condition and on-going treatment. When Petitioner arrived in Mississippi, he was taking approximately 12 different medications to address the following conditions: (1) ADHD; (2) back pain; (3) general pain and aches; (4) depression; (5) high blood pressure; (6) allergies; (7) Vitamin B deficiency; (8) heartburn/acid reflux; (9) high cholesterol; (10) heart issues; and (11) opioid addiction. Dr. Thomas recounts that she saw Petitioner on approximately 11 times between November, 2023 and May, 2025 for back issues. At no time, did Petitioner request an MRI, and in Dr. Thomas' medical opinion, she did not believe that he required such an examination. During this period, Petitioner complained about the effectiveness of certain medications, and Dr. Thomas changed his prescriptions in response to his reports of on-going pain, lack of efficacy, and desire to try different medications.

Dr. Thomas recounts that Petitioner was never in an emergency or critical state that raised a need for an MRI, surgical referral, or other diagnostic procedures. Petitioner was always able to walk into his appointments with a normal gait, and Dr. Thomas observed him playing basketball and running 1 to 2 miles during this time. Dr. Thomas reports she found his condition stable with no abnormal findings and no limitations in ambulation or range of motion.

Both Dr. Thomas and Mr. LeBlanc state that they provided treatment and care to Mr. Carter consistent with his symptoms and reports. They both opine that their treatment was consistent with the prevailing standard of care.

Legal Analysis

A moving party is entitled to summary judgment when it can show that there are no genuine issues of material fact, and the party is entitled to judgment as a matter of law. V.R.C.P. 56(a); *Lakeside Equip. Corp. v. Town of Chester*, 173 Vt. 317, 321 (1003). When the moving party does not bear the burden of persuasion on the claim for which it seeks judgment, it may satisfy its burden by “indicating an absence of evidence in the record to support the nonmoving party’s case.” *Mello v. Coben*, 168 Vt. 639, 639–40 (1998). In a case, like the present one where the issue is whether the Department provided sufficient medical care in fulfillment of its obligation to provide such to the prevailing standard of medical care, a petitioner must show that the actions and treatment fell below this standard. *Bittner v. Centurion of Vermont, LLC*, 2021 VT 73, ¶ 24. To establish this, a petitioner normally must obtain expert medical testimony to establish: “(1) the proper standard of medical skill and care; (2) that the defendant's conduct departed from that standard; and (3) that this conduct was the proximate cause of the harm complained of.” *Senesac v. Assoc. in Obstetrics and Gynecology*, 141 Vt. 310, 313 (1982).

In this case, Petitioner has not produced an expert or offered a set of facts that might lead to the conclusion that Defendants violated the duty of care. The undisputed statement of material facts shows that Petitioner received regular and responsive treatment to his back issues. Petitioner has a number of health issues, and the back pain is only one part. The record shows, however, no evidence that these back issues became unmanageable or rose to the point where there is evidence that the care offered by the Department or its agents in Mississippi fell below the reasonable standard of care.

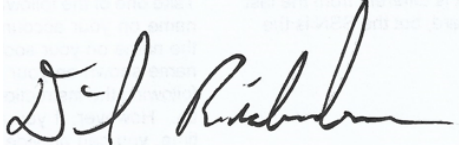
Given that Petitioner has not retained an expert, that discovery has closed, and that there has been no opposition to the present motion or competing statement of material facts, there is neither an indication of any issues that fall outside the care described in Defendant’s statement of undisputed material facts or an expert opinion that would rebut the characterization offered by Defendants’ experts that the care given fell within the acceptable level medical care that Petitioner would have received outside of the facilities. 28 V.S.A. § 801.

In this respect, Defendants’ unopposed filings indicate that the care given to Petitioner was consistent with the prevailing standard of care, and Defendants are entitled summary judgment on Petitioner’s claims.

ORDER

Based on the foregoing, Defendants' Motion for Summary Judgment is **Granted** for all pending claims under Petitioner's revised complaint. Pursuant to V.R.C.P. 56(a), the Court enters judgment in favor of Defendants as there are no disputed material facts, and Defendants are entitled to Judgment as a matter of law.

Electronically signed on 11/4/2025 6:12 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge