

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

VAUGHN GARY MAXFIELD,

Plaintiff,

vs.

JUSTIN JUNGWIRTH,
KYLEE FRANKLIN,
PATTY DUNWOODY,
GLEN BISSETT,
JOSHUA BOLL, and
WALWORTH COUNTY, SOUTH DAKOTA,

Defendants.

File 1:18-cv-01006-KES

FOURTH AMENDED COMPLAINT

Plaintiff, Vaughn Gary Maxfield, as and for his Fourth Amended Complaint against Defendants, Justin Jungwirth, Kylee Franklin, Patty Dunwoody, Glen Bissett, Joshua Boll, and Walworth County, South Dakota, states and alleges as follows:

Jurisdiction and Venue

1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343, this being an action seeking redress for the violation of Plaintiff's constitutional and civil rights.

2. Venue is proper under 28 U.S.C. § 1391(b) and (c) in that multiple defendants reside in the District of South Dakota, Northern Division, and that the events giving rise to this claim occurred within the boundaries of the District of South Dakota, Northern Division.

The Parties

3. Plaintiff Vaughn Gary Maxfield (“Maxfield”) was detained in the Walworth County Jail in Selby, South Dakota, in and around May 2017 through October 2017, though not continuously.

4. Defendants Justin Jungwirth (“Jungwirth”), Patty Dunwoody (“Dunwoody”), Glen Bissett (“Bissett”), and Joshua Boll (“Boll”) upon information and belief, are residents of South Dakota and, Defendant Kylee Franklin is a resident of North Dakota, and at all times relevant herein, all individually-named defendants were duly appointed and acting officers, servants, employees and agents of Walworth County, South Dakota. They are being sued in their individual capacities.

5. At all times relevant to this action, each individually-named defendant was acting under color of law and with the badges and indices of their governmental authority.

6. Defendant Walworth County, South Dakota (“Walworth County”), is and was at all times relevant herein a governmental body formed under the laws of the State of South Dakota.

7. Defendants were responsible for providing for the safety, health care, and serious medical needs of Maxfield while he was detained in the Walworth County Jail.

Factual Background

8. On or about May 7, 2017, Maxfield broke his left arm and hand.

9. On May 11, 2017, Maxfield was seen at the Sanford Bismarck Medical Center for his broken left arm and hand.

10. After it was confirmed Maxfield’s arm and hand were broken, surgery was scheduled for May 16, 2017.

11. In the meantime, Maxfield was provided a splint for his arm and hand.

12. Maxfield was also provided the following medications: cephalexin (for infections); bupropion (anti-depressant); hydrocodone-acetaminophen (pain relief); orphenadrine (muscle relaxant); ketorolac (anti-inflammatory); and gabapentin (anxiety and pain relief).

13. In addition to his broken arm and hand, Maxfield had a medical history significant for, among other things, bipolar 2 disorder, ADHD, and severe anxiety. He took Zyprexa (olanzapine), Wellbutrin (bupropion), and Neurontin (gabapentin).

14. On or about May 13, 2017, Maxfield was pulled over while driving through Walworth County, South Dakota, and detained in the Walworth County Jail shortly thereafter.

15. Maxfield immediately reported his broken arm and hand to jail staff, and the same was notated on Maxfield's preliminary health screening form, which is dated May 14, 2017.

16. All Walworth County Jail staff, including defendants, had access to Maxfield's preliminary health screening form.

17. Shortly after being detained, each defendant was made aware of Maxfield's broken arm and hand.

18. Maxfield also made his mental health issues and need for medications known to each defendant.

19. Maxfield made several requests to defendants that he receive medical attention to treat his broken arm and hand and to treat his mental health issues, as did his criminal defense attorney.

20. Defendants, however, refused to provide Maxfield with adequate medical treatment, claiming that he was faking his injury and that he did not have a broken arm or hand.

21. Defendants' refusal to provide Maxfield adequate medical treatment caused him severe (and completely unnecessary) physical, emotional, and mental pain and suffering.

22. Defendants finally allowed Maxfield to be seen by a medical provider on June 8, 2017.

23. He was taken to the Mobridge Regional Hospital and seen by Karen Fryhling, CNP.

24. CNP Fryhling confirmed that Maxfield had suffered a broken arm and hand, but surgery was no longer necessary as there was calcification around the injury.

25. It was also confirmed that Maxfield suffered from depression, bipolar affective disorder, and anxiety.

26. A wrap was applied around Maxfield's arm to assist with the healing process and to alleviate pain.

27. Maxfield was prescribed the following: Wellbutrin (for depression); Zyprexa (for bipolar); gabapentin (for anxiety); and ibuprofen 800 mg (for pain).

28. Specific directives were given regarding the frequency for which the medications should have been taken.

29. During the appointment on June 8, 2017, the transporting officer called Franklin to inform her that Maxfield's arm and hand were in fact broken, and in response, Franklin stated: "I'm going to have to figure out a way to cover this up."

30. Once Maxfield arrived back at the Walworth County Jail, Franklin required the wrap be removed.

31. Maxfield informed Franklin that he had been prescribed ibuprofen for the pain, and in response, Franklin stated: "I don't give a damn what the nurse says, you're still not getting it. I approve the ibuprofen, not some nurse."

32. The medical records showing the above were faxed to Walworth County Jail, specifically to Franklin, on June 8, 2017.

33. All Walworth County Jail staff, including each defendant, had access to the medical records faxed from Moberge Regional Health on June 8, 2017.

34. Walworth County Jail staff, including defendants, intentionally refused to administer Maxfield his medications in accordance with the directives included in the medical record.

35. For example, defendants would refuse to provide Maxfield ibuprofen for days at a time; indeed, Maxfield was denied ibuprofen from June 9, 2017, through July 9, 2017.

36. As a result of not receiving his medications, Maxfield experienced severe physical, emotional, and mental pain and suffering, anxiety, and depression.

37. Maxfield was released from jail on or about July 10, 2017.

38. On or about July 15, 2017, Maxfield was again detained in the Walworth County Jail and placed into solitary confinement, known as the "SHU."

39. Maxfield again requested his needed medications, as he did not have any on his person when he was detained.

40. However, jail staff, including defendants, refused to obtain Maxfield his medications, even though they were aware of his need for mental health medications.

41. On or about July 19, 2017, Maxfield began experiencing severe tooth pain.

42. Maxfield informed defendants of the same, but defendants refused to provide him any medical care for the tooth pain; once again, Franklin accused Maxfield of faking it.

43. Between on or about August 1 and August 4, 2017, Maxfield met with Jungwirth and inquired about when he would be let out of the SHU, his mental health medications, and whether anything would be done about his dental issues.

44. Jungwirth apologized that Maxfield was not being given his mental health medications or any kind of dental treatment.

45. After this meeting, Jungwirth authorized Maxfield to receive salt water, nothing else.

46. Maxfield was let out of the SHU on or about August 16, 2017.

47. Maxfield continued to request medical help to address his dental issues and mental health issues.

48. In response, jail staff, including defendants, laughed at and taunted Maxfield.

49. A mental health appointment and dental appointment was finally scheduled for Maxfield on or about September 8, 2017.

50. At the dental appointment, the dentist informed Maxfield that an abscess had formed and spread beyond the nerve and required removal of tooth, gums, and bone.

51. The dentist also informed Maxfield that had he been brought in earlier, such an extensive procedure would not have been necessary.

52. The procedure was performed that day.

53. Maxfield's mental health appointment resulted in his mental health prescriptions being ordered.

54. Maxfield was provided his mental health prescriptions until October 7, 2017, when they ran out.

55. Defendants refused to reorder more medications for Maxfield.

56. Maxfield was transported to the state penitentiary on or about October 10, 2017.

57. During his detention at Walworth County Jail, defendants retaliated against Maxfield for filing grievances and for making medical requests.

58. After filing grievances and making medical requests, defendants retaliated against Maxfield for filing grievances and making medical requests in the following ways:

- a. By propositioning, encouraging, and compensating another detainee, Thomas Miller, to harass and intimidate Maxfield, which Thomas Miller then did;
- b. By refusing to provide Maxfield his needed medications and medical care;
- c. By taking away his blankets;
- d. By placing Maxfield in solitary confinement; and
- e. By refusing to provide Maxfield with grievance forms and medical request forms.

Count I – Civil Rights Violation under 42 U.S.C. § 1983 – Failure to Provide Medical Care (against all individually-named defendants)

59. Maxfield re-alleges and incorporates by reference all preceding paragraphs.

60. Maxfield suffered from objectively serious medical needs, and the individual defendants had actual knowledge of the same.

61. Despite actually knowing of Maxfield's objectively serious medical needs, individual defendants, acting under color of law, deliberately disregarded said needs and acted or failed to act in a way that deprived Maxfield of necessary and adequate medical care in violation

of the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

62. Defendants' conduct in failing to provide medical care resulted in Maxfield experiencing serious and permanent injuries and damages, including extreme physical and mental pain and suffering, emotional distress, disability, lost enjoyment of life, and the need for future medical treatment greater than he would have required had he received appropriate medical treatment and his prescribed medications.

Count II – Civil Rights Violation under 42 U.S.C. § 1983 – Unlawful Policy and Custom (against Walworth County)

63. Maxfield re-alleges and incorporates by reference all preceding paragraphs.

64. Walworth County developed and maintained policies, practices, and/or customs that exhibited deliberate indifference to the constitutional rights of persons in custody and being detained, which caused a violation of Maxfield's constitutional rights.

65. It was the policy, practice, and/or custom of Walworth County to fail to exercise reasonable care in training and supervising its jail staff with respect to the provision of medical care to detainees, thereby failing to adequately prevent constitutional violations by its jail staff.

66. It was the policy, practice, and/or custom of Walworth County to fail to provide adequate medical care to jail detainees.

67. For example, rather than having in place a rule making it mandatory to follow medical orders, jail personnel would make their own arbitrary decisions regarding when and how to administer detainee medications and to provide other medical treatment.

68. Moreover, Walworth County has put in place a rule for correctional officers encouraging them not to provide adequate medical care to detainees. The rule provides:

If an inmate requests medical attention, have the individual fill out a medical information release form. If the person is not bleeding or doesn't have a fever, or isn't medically stressed, he/she can wait until someone has time to take him or her to the doctor or until he or she is released from custody. Remember, if they came here with it, we don't pay to get rid of it. That is why it is important to medically assess the inmate before he/she is incarcerated. If the person's teeth are gone or the person's leg is about to fall off because of untreated diabetes - then the person needs to take care of it themselves or through their insurance provider. Do not let officers push prisoners into this facility who need medical attention. It is the officer's responsibility to take care of major medical problems before the prisoner can be jailed.

When booking in a prisoner, gather their medication so the county won't have to purchase it. Have a family member or an officer get the medication to the jail.

69. Walworth County's policies, practices, and/or customs demonstrate a deliberate indifference to the rights of detainees and were a cause of the violations to Maxfield's constitutional rights and the injuries described above.

Count III – Civil Rights Violation under 42 U.S.C. § 1983 – Retaliation (against all individually-named defendants)

70. Maxfield re-alleges and incorporates by reference all preceding paragraphs.

71. Maxfield engaged in protected activity, namely making grievances and requesting medical help.

72. Defendants retaliated against Maxfield for engaging in such protected activity by taking adverse action against him.

73. Defendants' conduct would chill a person of ordinary firmness from engaging in the protected activity.

WHEREFORE, Plaintiff, Vaughn Gary Maxfield, prays for the following relief:

1. For judgment in plaintiff's favor and against defendants, jointly and severally, in a monetary amount to be proven at trial to compensate plaintiff for defendants' violation of his constitutional rights and the damages he suffered and will

continue to suffer as a result, as well as to punish defendants for their conduct and to deter similar conduct from happening;

2. For plaintiff's costs and disbursements as allowed by law, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

3. For such other relief as deemed just and equitable by the Court.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated this 2nd day of March, 2020.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ Reece M. Almond

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