

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JOHNNY ANDREW MCGILL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 5:23-cv-329-MTT-CHW
	:	
Doctor CESAR SISKKA,	:	Proceedings Under 42 U.S.C. § 1983
	:	Before the U.S. Magistrate Judge
Defendant.	:	
<hr style="width: 40%; margin-left: 0;"/>	:	

REPORT AND RECOMMENDATION

Plaintiff Johnny McGill, a state inmate, filed a *pro se* civil rights complaint seeking relief under 42 U.S.C. § 1983 regarding improper medical care at Riverbend Correctional Facility. (Doc. 1). Defendant Doctor Cesar Siska, the remaining defendant, now moves for summary judgment. (Doc. 25). Plaintiff did not directly respond but filed a cross motion for summary judgment. (Doc. 27). Defendant filed a response to Plaintiff and opposes Plaintiff’s motion. (Doc. 28). As discussed below, the undisputed facts show that Defendant did not violate Plaintiff’s First Amendment rights. Therefore, it is **RECOMMENDED** that Defendant’s motion for summary judgment (Doc. 25) be **GRANTED** and Plaintiff’s motion for summary judgment (Doc. 27) be **DENIED**.

BACKGROUND

Plaintiff brought this action on August 24, 2023, alleging claims of deliberate indifference to a serious medical need against multiple defendants and a retaliation claim against Defendant Siska. (Doc. 1). Following screening of Plaintiff’s complaint under 28 U.S.C. § 1915A, the Court allowed Plaintiff to proceed on his retaliation claim against Defendant Siska. (Doc. 5). In his

retaliation claim, Plaintiff alleges that Defendant refused to treat him after Plaintiff filed a previous grievance against another medical provider. (Doc. 1, p. 4).

Defendant filed an answer that raised the defense of failure to state a claim, among others. (Doc. 21). The parties then engaged in a period of discovery. Defendant and Plaintiff have now filed cross motions for summary judgment.

SUMMARY JUDGMENT STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The party moving for summary judgment bears the burden of informing the Court of the basis for its motion, and of citing “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” that support summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986). In resolving motions for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

Although Plaintiff failed to respond to Defendant’s motion for summary judgment, summary judgment is not properly awarded by default. See *Trs. of Cent. Pension Fund of Int’l Union of Operating Eng’rs and Participating Emp’rs v. Wolf Crane Serv., Inc.*, 374 F.3d 1035, 1039–40 (11th Cir. 2004). By failing to respond to Defendant’s motion, however, Plaintiff has failed to rebut Defendant’s statements of undisputed material facts, triggering consequences under both the Federal Rules of Civil Procedure and this Court’s Local Rules.

Federal Rule of Civil Procedure 56(e)(2) provides that if a party “fails to properly address another party’s assertion of fact as required by Rule 56(c),” then the Court may “consider the fact undisputed for purposes of the motion.” FED. R. CIV. P. 56(e)(2). This Court’s Local Rule 56

similarly provides: “All material facts contained in the movant’s statement which are not specifically controverted by specific citation to particular parts of materials in the record shall be deemed to have been admitted, unless otherwise inappropriate.” MDGA Local Rule 56. Nevertheless, the Court has reviewed the record of evidence to confirm the facts set forth in Defendant’s statement.

Finally, Federal Rule of Civil Procedure 56(e)(3) provides that the Court may “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to” summary judgment. FED. R. CIV. P. 56(e)(3); *e.g.*, *Urdaneta v. Wells Fargo Bank, N.A.*, 734 F. App’x 701, 704 (11th Cir. 2018). Because Defendant properly supported his factual assertions with specific citations to the record, and because Plaintiff failed to respond, Defendant’s facts may be accepted by the Court as undisputed.

RELEVANT FACTS

Before the Court is Plaintiff’s remaining retaliation claim, in which he alleges that Defendant Dr. Siska refused to treat Plaintiff after Plaintiff filed a grievance against Nurse Charles Coleman at Riverbend Correctional Facility. (Doc. 1). Many of the facts are undisputed. Plaintiff was incarcerated at Riverbend at the time of the incident. Defendant was employed as a licensed physician providing care to inmates at Riverbend during the time relevant to this suit. (Doc. 25-7, ¶ 1, 3).

Beginning in January 2020, Defendant provided medical care to Plaintiff for health issues unrelated to this lawsuit. On September 7, 2021, treatment notes from Nurse Coleman indicate that Plaintiff was seen for lesions on his lips that Plaintiff insisted were caused by petroleum jelly issued by medical staff in April 2021. (Doc. 25-5, p. 11). At the end of this visit, Plaintiff “became irate and stormed out.” (*Id.*). Plaintiff filed a grievance the following day in which he alleged:

Back on April 2021, I put in 3 Medical Requests, asking to see the doctor, for my chemically burnt lips, that I got from the 100% petroleum jelly, that Keefe commissary sold on the store. Officers Grant, Miller and Simmons were aware of my attempt to see the doctor at that time. All 3 requests were ignored, and went unanswered. On 9-6-21 I put on another medical request, concerning my lips, and 9-7-21 I was called up to Medical. but not by callout. When I got there I didn't see the nurse or Doctor which is the usual medical procedure. The Director of Medical, Mr. Coleman, called me in the examination room, and examined me himself. I didn't see a Nurse or Doctor before seeing Mister Coleman, nor did I see them afterwards. He looked at my lips, and said it look like Herpes to him. I told him they were burnt, and he wasn't the Doctor. We began to argue and he dismissed me. But again, I still didn't get any medical attention to my lips. Officer Forney, escorted me out. She was very polite and told me that Mister Coleman was scheduling me to see the doctor. This has been ongoing since April. I've continually been denied my right to medical attention while under supervision of the Riverbend Correctional Facility. Resolution Requested: I want Medical Staff Director, Coleman, to be removed from all operation here at the Riverbend Facility. He has stood on the gap, to keep me from Medical Doctors here at Riverbend. And that is deliberate indifference to a medical need. And I want 2 pictures taken of my lips. Send one to the Grievance Review Board or Atlanta and the other one will be sent to my family.

(Doc. 25-3, p. 2) (cleaned up). This grievance was denied. (*Id.*, p. 2–4).

Medical records show that Defendant treated Plaintiff on September 13, 2021, six days after the visit with Nurse Coleman referenced in Plaintiff's grievance, and Plaintiff did not complain of any symptoms related to his mouth or lips. (Doc. 25-5, p. 12). Defendant treated Plaintiff again on September 22, 2021. (*Id.*, p. 13). Plaintiff complained of dry lips, but there is no evidence of any lesions or burns on his mouth or lips. (*Id.*). Defendant treated Plaintiff twice more over the following week, and Plaintiff did not complain of any symptoms related to his mouth or lips. (*Id.*, p. 45–46).

Plaintiff submitted a second grievance on September 24, 2021, in which he realleged that Nurse Coleman kept him from receiving medical treatment. (Doc. 25-3, p. 4–5). This grievance was denied. (*Id.*).

Defendant next treated Plaintiff on October 19, 2021, for a follow-up of a cardiac catheterization, and there is no evidence that Plaintiff complained of any symptoms related to his mouth or lips. (Doc. 25-5, p. 16). Plaintiff was advised that he would be quarantined for fourteen days in medical housing. (*Id.*; Doc. 25-7, ¶ 20). Medical records note that Plaintiff was quarantined from October 19, 2021, to November 1, 2021. (Doc. 25-5, p. 17–19). Defendant, along with other medical staff, monitored Plaintiff every day that Plaintiff was quarantined. (Doc. 25-7, ¶ 21). On October 26, 2021, Plaintiff approached Defendant and complained of dry lips. (*Id.*, ¶ 23). Defendant advised Plaintiff that he did not have an appointment scheduled, and as such, Defendant was not permitted to discuss any of Plaintiff’s medical conditions. (*Id.*, ¶ 23–24). Defendant also informed Plaintiff that in his medical opinion, Defendant did not require further treatment for his lips. (*Id.*, ¶ 24). At this time, Plaintiff “threatened to file a grievance.” (*Id.*). Plaintiff states in his verified complaint that during this interaction, Defendant refused to treat Plaintiff and stated, “you filed a grievance on Dr. Coleman, I’m not seeing you anymore.”¹ (Docs. 1, p. 4; 1-1, p. 2).

¹ Plaintiff’s complaint was given under penalty of perjury. *See* 28 U.S.C. § 1976. The Court must “credit the specific facts pled in [Plaintiff’s] sworn complaint when considering his opposition to summary judgment.” *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1098 (11th Cir. 2014) (internal quotations and citations omitted); *see LaCroix v. Lee Cnty., Fla.*, 819 F. App’x 839, 842 n.1 (11th Cir. 2020) (“[Plaintiff] filed a verified complaint, which can serve as an affidavit under 28 U.S.C. § 1746.”); *see also Sorrells v. Dodd*, 2024 WL 3981781, *4 n.11 (11th Cir. Aug. 29, 2024) (explaining that an unsworn declaration “carries the same force as a sworn affidavit under 28 U.S.C. § 1746 because he signed and dated the document, and declared under penalty of perjury that his statements are true and correct”) (internal quotations and citations omitted).

Defendant testifies in his sworn declaration that he never refused to provide treatment to Plaintiff on October 26, 2021, (Doc. 25-7, ¶ 25–26, 40). The record is construed in the light most favorable to the non-moving party. Although before the court are cross motions for summary judgment, even when the facts are construed in Plaintiff’s favor, as explained below, Defendant is entitled to summary judgment.

On October 28, 2021, Plaintiff filed a third grievance related to improper medical care, in which he states:

On Tuesday 10-26-21, I saw Doctor Siska sitting at the Front Desk in Medical. I reminded him of my September 20 2021 visit, of my 6 months check up. Which during that visit, he looked at my lip burn, and gave me 7 Vaseline gauze strip packs, and said to temporary use them, until he could research a better medical solution. At that point, Doctor Siska told me, he refuse to treat me, because I file a grievance against Medical Administrater [*sic*] Coleman. Officer Sapp was sitting there as a witness. I've been on medical quarantine since October 18, 2021 and have to stay a period of 14 days. During this time, Doctor Siska has refused to give me medical attention to my lip burn.

(Doc. 25-3, p. 8).

Medical records indicate that Defendant treated Plaintiff next on December 15, 2021, and those records note that Plaintiff had normal lips. (Doc. 25-5, p. 20). Defendant treated Plaintiff eight times from March 7, 2022, to January 18, 2024, and medical records do not indicate that Plaintiff complained of any symptoms related to his mouth or lips. (*Id.*, p. 21–28).

ANALYSIS

Plaintiff claims that Defendant retaliated against him by refusing to provide medical care after Plaintiff filed a grievance against another medical provider. Both parties have filed motions for summary judgment. In Plaintiff's motion for summary judgment, he appears to argue that no genuine issue exists as to whether Defendant refused to treat his lips.² The burden of proof is on

² Plaintiff's motion for summary judgment was both untimely and lacked a separate statement of material facts as required by Local Rule 56. Although the Court may deny the motion as untimely, *see Dedge v. Kendrick*, 849 F.2d 1398, 1398 (11th Cir. 1988), this recommendation, in the interests of justice, considers Plaintiff's motion for summary judgment on the merits.

Plaintiff, however, and Plaintiff has not produced evidence to show that Defendant refused medical care or retaliated in any manner. Instead, the record, even when construed in Plaintiff's favor, demonstrates that Defendant is entitled to summary judgment.

I. Plaintiff's Motion for Summary Judgment

In his motion for summary judgment, Plaintiff makes several assertions as to the severity of his symptoms. (Doc. 27, p. 2). He argues that "Defendant cannot show any form of scientific testing having been performed. [Plaintiff] can show photographs of 'before' and 'after' of his lips that prove his claims of deliberate indifference." (*Id.*). This argument fails for two reasons. First, Plaintiff has not provided any photographs in the record to support such an assertion. Second, and more importantly, there is no deliberate indifference claim against Defendant before the Court. In his complaint, Defendant alleged that Defendant acted with deliberate indifference, but that claim was dismissed at screening. (Docs. 5, 11). The only claim pending before the Court is Plaintiff's retaliation claim against Defendant.

As his retaliation claim, Plaintiff has not shown that no genuine issue of material fact exists or that he is entitled to judgment as a matter of law. In his motion, Plaintiff admits that Defendant continued to treat Plaintiff throughout his time at Riverbend. (Doc. 27, p. 2). Contrary to Plaintiff's argument, as discussed below, Defendant is entitled to summary judgment even when the facts are construed in a light most favorable to Plaintiff.

II. Defendant's Motion for Summary Judgment

The First Amendment prohibits "prison officials from retaliating against prisoners for exercising the right of free speech" because "it is an established principle of constitutional law that an inmate is considered to be exercising his First Amendment right of freedom of speech when he complains to the prison's administrators about the conditions of his confinement." *O'Bryant v.*

Finch, 637 F.3d 1207, 1212 (11th Cir. 2011) (citations omitted). Plaintiff “may maintain a cause of action for retaliation under 42 U.S.C. § 1983 by showing that [Defendant’s] actions were ‘the result of [Plaintiff] having filed a grievance concerning the conditions of his imprisonment.’” *Id.* (quoting *Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003)). Plaintiff does not have to allege the violation of a “separate and distinct constitutional right.” *Id.* “Instead, the core of the claim is that [Plaintiff] is being retaliated against for exercising his right to free speech.” *Id.* To establish a retaliation claim, Plaintiff must show that: “(1) his speech or act was constitutionally protected; (2) the defendant’s retaliatory conduct adversely affected the protected speech; and (3) there is a causal connection between the retaliatory actions and the adverse effect on speech.” *Moton v. Cowart*, 631 F.3d 1337, 1342 (11th Cir. 2011) (internal quotations and citation omitted).

Plaintiff alleges that Defendant refused to treat him on October 26, 2021, because Plaintiff had previously filed a grievance against another medical provider. Although Defendant initially argues that Plaintiff did not engage in constitutionally protected speech, “[i]t is an established principle of constitutional law that an inmate is considered to be exercising his First Amendment right of freedom of speech when he complains to the prison’s administrators about the conditions of his confinement.” *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008) (citing *Farrow*, 320 F.3d at 1248); *see O’Bryant v. Finch*, 637 F.3d 1207, 1212 n.10 (11th Cir. 2011). Plaintiff’s grievance against Nurse Coleman was protected speech.

Plaintiff has not shown, however, that he suffered an adverse action. An “adverse action” is one likely to “deter a person of ordinary firmness from engaging in such speech.” *Smith*, 532 F.3d at 1276. Viewed in the light most favorable to Plaintiff, the evidence in the record shows the following. While quarantined in medical housing, Plaintiff approached Defendant and complained of dry lips. (Doc. 25-7, ¶ 3). Defendant informed Plaintiff that because he did not have a scheduled

appointment, Defendant was not permitted to discuss any of Plaintiff's medical conditions. (*Id.*, ¶ 23–24). Regardless, Defendant informed Plaintiff that, in his own medical opinion, Plaintiff did not require further treatment for his lips. (*Id.*, ¶ 24). During this conversation, Defendant stated that he would not see Plaintiff anymore because of the previously filed grievance against Nurse Coleman, and Plaintiff threatened to file a grievance against Defendant. (*Id.*; Docs. 1, p. 4; 1-1, p. 2). Plaintiff filed a grievance against Defendant the following day. (Doc. 25-3, p. 8).

While the fact that Plaintiff was not deterred from filing a grievance against Defendant is not dispositive of this issue given the objective nature of the inquiry, it does lend support to the conclusion that Defendant did not, as Plaintiff argues, refuse to provide medical care and treatment for Plaintiff's dry lips. Even if Defendant did say that he was refusing to treat Plaintiff because of the previously filed grievance, there is no evidence in the record that any adverse treatment resulted from that statement. Rather, the record demonstrates that Plaintiff "approached [Defendant] at the medical desk inquiring about medicated ointment for his lip. [Defendant] stated that he already gave him treatment previously and that Chapstick would be fine for further use." (Doc. 25-6, ¶ 21). Plaintiff has not provided any evidence to contradict Defendant's sworn statements that Defendant determined that Plaintiff's lips did not require further medical care. Defendant continued to treat the conditions for which Plaintiff was quarantined for until Plaintiff was released from quarantine. (*Id.*, ¶ 27). Defendant provided Plaintiff with treatment at least nine times subsequent to October 26, 2021. (Doc. 25-5, p. 20–28). The medical records show that Plaintiff did not complain of lip issues during any of those visits. (*Id.*).

Plaintiff has not provided any evidence to establish that Defendant refused to treat him; to the contrary, the record evidence shows that Defendant informed him that there was no further action medically necessary to treat any lip condition. (Docs. 25-7, ¶ 24; 25-6, ¶ 21). Plaintiff's bare

allegation that Defendant refused to treat him due to the grievance, even when viewed in the light most favorable to Plaintiff, is not sufficient to create a genuine issue of material fact to which a reasonable jury could return a verdict for him. *See Edmondson v. Velvet Lifestyles, LLC*, 43 F.4th 1153, 1159 (11th Cir. 2022) (“A genuine issue of material fact exists ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

CONCLUSION

Because the undisputed facts do not support Plaintiff’s retaliation claim against Defendant, it is **RECOMMENDED** that Defendant’s motion for summary judgment (Doc. 25) be **GRANTED** and Plaintiff’s motion for summary judgment (Doc. 27) be **DENIED**.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, **WITHIN FOURTEEN (14) DAYS** after being served with a copy thereof. Any objection is limited in length to **TWENTY (20) PAGES**. *See* MDGA Local Rule 7.1. The District Judge shall make a *de novo* determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for

failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 5th day of May, 2025.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge