

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FRANKLIN MARSHALL,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:23-cv-01049-TWP-KMB
)	
SAMUEL BYRD Doctor,)	
HEATHER Nurse (last unknown),)	
MAKAYLA Nurse (last unknown), ¹)	
KRISTINA STONE,)	
)	
Defendants.)	

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on a Motion for Summary Judgment filed by Defendants Samuel J. Byrd ("Dr. Byrd"), Heather Lowell-Pangallo ("Nurse Lowell-Pangallo"), and Mikayla Willis ("Nurse Willis") (collectively, "Defendants") (Dkt. 65). Plaintiff Franklin Marshall ("Mr. Marshall"), an inmate in the Indiana Department of Corrections (IDOC"), initiated this lawsuit against the Defendants and Kristina Stone pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to his serious medical need for custom orthopedic shoes, shoe insoles and ankle braces (Dkt. 1). For the reasons explained in the Order, the Motion for Summary Judgment is **granted in part and denied in part**.

I. BACKGROUND

The following facts are not necessarily objectively true, but as required by Federal Rule of Civil Procedure 56, the facts are presented in the light most favorable to Mr. Marshall as the non-moving party. *See Zerante v. DeLuca*, 555 F.3d 582, 584 (7th Cir. 2009); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

¹ Nurse Heather's true name is Heather Lowell-Pangallo and Nurse Mykala's true name is Mikayla Willis.

Mr. Marshall suffers from diabetes, plantar fasciitis, and bone spurs. (Dkt. 1 at 1). These conditions combined cause him significant foot pain. On or about October 6, 2014, Mr. Marshall was seen by Dr. Michael J. Helms ("Dr. Helms") for the pain in his feet (Dkt. 1 at 4–5). During this assessment, Dr. Helms ordered injections of lidocaine in both heels of his feet and ordered custom orthopedic shoes, shoe insoles, and ankle braces to treat Mr. Marshall's plantar fasciitis and heel spurs. *Id.* at 5. The shoes, insoles, and ankle braces greatly reduced the pain level in his feet. *Id.* Without his shoes, insoles, and braces, Mr. Marshall's condition causes chronic pain which affects all aspects of his life including walking and performing everyday tasks. *Id.* at 3–4.

Mr. Marshall was housed in the Secure Housing Unit ("SHU") at Wabash Valley Correctional Facility ("WVCF") on November 2, 2021. *Id.* at 3. The SHU is a form of housing for inmates whose continued presence in the general population would pose a serious threat to life, property, self, staff, or other offenders, or to the security or orderly operation of the facility. (Dkt. 65-3) When he was moved to the SHU, his shoes, insoles, and braces were confiscated by prison property staff and labeled as unauthorized. (Dkt. 1 at 5). Defendants contend that Mr. Marshall's shoes, insoles, and braces were not on the approved property list and thus, they were confiscated by IDOC staff (Dkt. 66 at 3).

Without his orthopedic medical devices, Mr. Marshall experienced chronic pain in his feet. On November 19, 2021, Dr. Byrd met with Mr. Marshall to provide a joint injection of lidocaine in his feet to provide relief for his plantar fasciitis symptoms (Dkt. 65-2 at 1). Mr. Marshall was also seen by Dr. Byrd on July 15, 2022, for knee injections. Mr. Marshall met with Dr. Byrd again on August 8, 2022, where Dr. Byrd specifically evaluated Mr. Marshall's feet concluding that his foot pain was controlled by medication. *Id.* at 15–19. On August 22, 2022, Mr. Marshall was seen by Nurse Lowell-Pangallo. *Id.* at 20-21. Nurse Lowell-Pangallo visited Mr. Marshall at his cell to

ask about his feet and they discussed him getting his orthopedic shoes, insoles, and ankle braces (Dkt. 1 at 7). Nurse Lowell-Pangallo also treated Mr. Marshall for a shoulder injection on September 14, 2022 (Dkt. 65-1 at 6).

On September 21, 2022, Mr. Marshall submitted a request for health care stating that he had sent a request about his orthopedic shoes, insoles, and braces (Dkt. 76-1 at 12). He reported that without his shoes and insoles, he was in severe pain. *Id.* Dr. Byrd responded on the form by writing, "[a]s we have spoke[n] previously, orthopedic shoes will be requested when you are back in general population. You can meet your ADLs ('activities of daily living') in segregation unit [without] orthopedic shoes as no need to walk to chow, work a job on your feet all day, etc." *Id.*

Mr. Marshall also filed a request to be seen for his mental health and reported being stressed out due to the mental and physical pain of not having his orthopedic shoes, insoles, and braces (Dkt. 1 at 8; Dkt. 41). On October 17, 2022, Mr. Marshall submitted a health care request stating, "I got a refusal in the mail today, [October 17, 2022,] saying I refused a sick call. I was never informed of a sick call. This refusal does not have my signature on it. It was for 10/7/22 if its about my feet I do want to be seen I'm in a lot of pain with my feet." (Dkt. 76-1 at 13). Nurse Willis responded on the form stating, "not new issue; has insoles/inserts and shoes; heel spurs; plantar; neuropathy; gout; already seen MD." *Id.*

Mr. Marshall filed a verified Complaint on June 15, 2023, alleging deliberate indifference (Dkt. 1). On June 28, 2024, Defendants filed their Motion for Summary Judgment (Dkt. 65). On September 13, 2024, Mr. Marshall filed his response and designated evidence (Dkt. 76) and the Defendants filed a timely Reply (Dkt. 79).

Defendant Kristina Stone has not answered the Complaint.

II. LEGAL STANDARD

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead, the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). When reviewing a motion for summary judgment, the Court views the record and draws all reasonable inferences from it in the light most favorable to the non-moving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 572–573 (7th Cir. 2017) (citation omitted).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. Fed. R. Civ. P. 56(e).

III. DISCUSSION

The Eighth Amendment's prohibition against cruel and unusual punishment imposes a duty on the states, through the Fourteenth Amendment, "to provide adequate medical care to incarcerated individuals." *Boyce v. Moore*, 314 F.3d 884, 889 (7th Cir. 2002) (citing *Estelle v.*

Gamble, 429 U.S. 97, 103 (1976)). "Prison officials can be liable for violating the Eighth Amendment when they display deliberate indifference towards an objectively serious medical need." *Thomas v. Blackard*, 2 F.4th 716, 721–22 (7th Cir. 2021). "Thus, to prevail on a deliberate indifference claim, a plaintiff must show '(1) an objectively serious medical condition to which (2) a state official was deliberately, that is subjectively, indifferent.'" *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021) (quoting *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016)).

The Court assumes for purposes of the summary judgment motion that Mr. Marshall's feet conditions were objectively serious. To avoid summary judgment, then, the record must allow a reasonable jury to conclude that Dr. Byrd, Nurse Lowell-Pangallo, and Nurse Willis acted with deliberate indifference—that is, that they "consciously disregarded a serious risk to [Mr. Marshall's] health." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 241 (7th Cir. 2021) (citation omitted).

Deliberate indifference requires more than negligence or even objective recklessness. *Id.* Rather, Mr. Marshall "must provide evidence that an official actually knew of and disregarded a substantial risk of harm." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016). "Of course, medical professionals rarely admit that they deliberately opted against the best course of treatment. So, in many cases, deliberate indifference must be inferred from the propriety of their actions." *Dean*, 18 F.4th at 241 (internal citations omitted).

The Seventh Circuit has held that deliberate indifference occurs when the defendant renders a treatment decision that departs so substantially "from accepted professional judgment, practice, or standards as to demonstrate that" it is not based on judgment at all. *Petties*, 836 F.3d at 729 (quoting *Cole v. Fromm*, 94 F.3d 254, 260 (7th Cir. 1996)). Deliberate indifference also

occurs when a defendant persists "in a course of treatment known to be ineffective," or effects "an inexplicable delay in treatment which serves no penological interest." *Id.* at 729–30.

Further, a Prisoner's disagreement with a physician's treatment decision does not give rise to a constitutional violation unless medical treatment is "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition." *Snipes v. Detella*, 95 F.3d 586, 592 (7th Cir. 1996) (quoting *Thomas v. Pate*, 493 F.2d 151, 158 (7th Cir. 1974)).

A. Preliminary Matters

In their reply brief, Defendants point out that Mr. Marshall submitted a one-and-a-half-page response in opposition, and a list of 10 items of evidence without explanation, and fails to have section labeled 'Statement of Material Facts in Dispute' that identifies the potentially determinative facts and factual disputes (Dkt. 79 at 2). Defendants argue that Mr. Marshall's failure to properly respond their motion, despite having been provided with detailed notice of his obligations and the requirements of Fed. R. Civ. P. 56 and S.D. Ind. L.R. 56-1, constitutes an admission that there are no genuine issue of material fact warranting a trial, therefore they are entitled to judgment as a matter of law. (Dkt. 79 at 3 (citing *Terrell v. Am. Drug Stores*, 65 F. App'x 76, 77 (7th Cir. 2003)). "a section labeled 'Statement of Material Facts in Dispute' that identifies the potentially determinative facts and factual disputes that [he] contends demonstrate a dispute of fact precluding summary judgment." *Id.* at 2.

"[D]istrict courts are entitled to considerable deference in the interpretation and application of their local rules." *Novak v. Bd. Of Trs.*, 777 F.3d 966, 974 (7th Cir. 2015) (quoting *Hunt v. DaVita, Inc.*, 680 F.3d 775, 780 n.2 (7th Cir. 2012)). "[U]nless the district court enforces (or relaxes) the rules unequally as between the parties, the decision to overlook any transgression of the local rules is left to the district court's discretion." *Id.* (quoting *Modrowski v. Pigatto*, 712 F.3d

1166. 1169 (7th Cir. 2013) (alterations omitted) (internal quotation marks omitted)). Further, the case Defendants cite dealt with a non-movant who did not respond to a motion for summary judgment. *See Terrell*, 65 F. App'x at 77. That is not the case here. While Defendants are correct that Mr. Marshall's Response is more akin to a designation of evidence, Mr. Marshall still attempted to respond in proper form and listed ten pieces of evidence he believes support his assertions of fact (*See* Dkt. 76). Mr. Marshall is proceeding without representation, and a document filed by a *pro se* litigant is to be liberally construed. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Because the Court has wide latitude to relax the local rules which govern it, the Court finds that Mr. Marshall's Response does not constitute an admission that there are no disputed issues of material fact. Moreover, "[e]ven where a non-movant fails to respond to a motion for summary judgment, the movant still has to show that summary judgment is proper given the undisputed facts." *Robinson v. Waterman*, 1 F.4th 480, 483 (7th Cir. 2021).

This brings the Court to Defendants' arguments in support of their Motion for Summary Judgment. Defendants argue that they are entitled to summary judgment for three reasons: "(1) they had no control or discretion over which items of personal property were allowed or not allowed in the SHU at WVCF; (2) Dr. Byrd and Nurse Lowell-Pangallo acted reasonably, appropriately, and within the standard of care to render medical services to [Mr. Marshall]; and (3) Nurse Willis had no personal involvement with [Mr. Marshall's] medical care at the times relevant to his Complaint." (Dkt. 66 at 14). Defendants contend that there are no genuine disputes of material fact, and therefore they are entitled to summary judgment. *Id.* The Court will address each argument in turn.

B. Loss of Orthopedic Shoes, Insoles, and Ankle Braces

Defendants argue that they had no personal involvement in Mr. Marshall's central claim that Defendants facilitated the confiscation of his medical devices. *Id.* at 15. Defendants contend that the IDOC staff is responsible for the confiscation of Mr. Marshall's medical devices and is responsible for the IDOC Policy and Operational Procedure. Defendants further contend that the orthopedic shoes, insoles and foot braces are not approved items pursuant to the IDOC policy. *Id.*

Defendants misconstrue Mr. Marshall's Complaint. Mr. Marshall does not assert that Defendants were responsible for confiscating his medical devices—he even admits that the confiscation was performed by IDOC staff (Dkt. 1 at 5 ¶ 2). Rather, Mr. Marshall complains that despite being in chronic pain, the Defendants ignored his requests for his medical devices and none of the Defendants even attempted to provide his medical devices to him while he was in the SHU (Dkt. 1 at 10-13 ¶ 7).

Defendants have not identified any evidence in the record showing that they attempted to provide Mr. Marshall his medical devices and do not argue that they explored doing so as a possible solution. Instead, Defendants simply assert that they have no control over what items are approved in the SHU and that Mr. Marshall's medical devices are not approved. However, the only evidence identified by the Defendants in support of their assertion that Mr. Marshall's shoes, insoles, and braces were not approved is the Operational Procedure attached to the IDOC Policy (*See* Dkt. 65-4). Yet, under property an offender may possess while in the SHU, the Operational Procedure provides that offenders may possess "1 pair tennis shoes/slip ons." *Id.* at 1. The Operational Procedure does not discuss what occurs when an inmate has a prescription for medical devices. However, the Manual of Policy and Procedure for the SHU states that "the Health Services staff shall review the offender's health record to determine whether any health conditions which might

be impacted by the offender's restrictive status housing exist." (Dkt. 65-3 at 9). The designated evidence does not make clear that the Operational Procedure and IDOC Policy bans Mr. Marshall's medical devices as his orthopedic shoes and insoles could fall within the category of "1 pair tennis shoes/slip ons." *Id.*

Defendants have failed to show that Mr. Marshall's medical devices were not approved and therefore, a reasonable jury could conclude that the failure to provide Mr. Marshall his medical devices constituted deliberate indifference. *Petties*, 836 F.3d at 730 (Deliberate indifference can occur when a defendant effects "an inexplicable delay in treatment which serves no penological interest."). The next question is whether any of the Defendants were responsible for the failure to provide Mr. Marshall his medical devices. *See Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995) (To recover under 42 U.S.C. § 1983, a plaintiff must establish that a defendant "was personally responsible for the deprivation of a constitutional right.")).

The personal responsibility requirement is satisfied "if the conduct causing the constitutional deprivation occurs at [the defendant's] direction or with [their] knowledge and consent." *Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982) (citations omitted). The designated evidence is insufficient for a reasonable jury to conclude that Nurse Lowell-Pangello or Nurse Willis were personally responsible for the denial of Mr. Marshall's medical devices. However, not so with Dr. Byrd.

In his verified Complaint, Mr. Marshall's states that Nurse Lowell-Pangello deferred to Dr. Byrd's authority on this issue, and when he told Nurse Lowell-Pangello about his pain in his feet, she told him that she would discuss with Dr. Byrd (Dkt. 1 at 7). Nurse Willis wrote on Mr. Marshall's health care request #595486 that Mr. Marshall had "already seen MD." *Id.* at 13. The

evidence shows that Dr. Byrd, as the attending physician, was responsible for the treatment provided in this case. The medical records indicate that it was Dr. Byrd's decision, rather than Nurse Lowell-Pangello's or Nurse Willis', to delay the ordering of Mr. Marshall's medical devices. Dr. Byrd responded on Mr. Marshall's health care request #590756 by writing, "[a]s we have spoke[n] previously, orthopedic shoes will be requested when you are back in general population. You can meet your ADLs ("activities of daily living") in segregation unit [without] orthopedic shoes as no need to walk to chow, work a job on your feet all day, etc." (Dkt. 76-1 at 12). But Mr. Marshall's request for the orthopedic shoes was not merely to allow daily activities on his feet, the shoes were necessary to relieve the extreme pain that he would experience without the shoes. The Court concludes, based on the evidence presented, a reasonable jury could conclude that Dr. Byrd was deliberately indifferent for failing to attempt to provide Mr. Marshall his medical devices.

C. Reasonableness of Actions

Defendants argue that Dr. Byrd and Nurse Lowell-Pangello provided Mr. Marshall with reasonable and appropriate medical care which was within the standard of care despite the conditions of his confinement (Dkt. 66 at 15–16). The Court will discuss the reasonableness of each Defendant in turn.

1. Dr. Byrd

Defendants argue that Dr. Byrd provided Mr. Marshall with lidocaine and methylprednisolone acetate injections shortly after his medical devices were taken away. *Id.* at 16. They argue that Dr. Byrd believed that Mr. Marshall's condition could be managed through medication because Mr. Marshall had no change in his gait. However, Mr. Marshall's medical records indicate that a previous physician found that his condition could not be managed through medication and his medical devices were necessary. Mr. Marshall's 2016 provider consultation

report asked the question "[c]an equivalent medication substitution be used?" and the response "No" is circled (Dkt. 76-1 at 9). While a disagreement between medical personnel over what constitutes appropriate treatment is insufficient to establish deliberate indifference, *Reed v. Indiana Dept. of Corrections*, 30 Fed. Appx. 616, 618 (7th Cir. 2002) (citing *Estelle v. Gamble*, 429 U.S. 97, 107 (1976)), Dr. Byrd's own response on Medical Form #590756 show that he too may have believed the appropriate treatment for Mr. Marshall was to be provided his medical devices (Dkt. 76-1 at 12). In relevant part, Dr. Byrd wrote "orthopedic shoes will be ordered once you are back in general population." *Id.* Dr. Byrd persisting in a treatment he believed to be less effective or causing a delay in providing Mr. Marshall's shoes, insoles, and braces could constitute deliberate indifference. *Petties*, 836 F.3d at 729–30.

While it appears that Dr. Byrd may have believed that Mr. Marshall's orthopedic shoes were not approved, Dr. Byrd has not shown that Mr. Marshall's devices were in fact not approved; and as a medical professional, he has not shown that he made any effort to provide Mr. Marshall with his medically necessary devices. The Operational Procedure Defendants allows individuals housed in the SHU to have "1 pair tennis shoes/slip ons." (Dkt. 65-4 at 1). Mr. Marshall's orthopedic shoes could likely fit within the approved "tennis shoes" category. Absent evidence to the contrary, the Court cannot conclude that Dr. Byrd was not deliberately indifferent and therefore must **deny** summary judgment as to Dr. Byrd. A mere, and possibly wrongful, confiscation of Mr. Marshall's orthopedic shoes by prison property staff is not enough to absolve Dr. Byrd of any responsibility to even attempt to provide Mr. Marshall the proper medical treatment.

2. Nurse Lowell-Pangello

Defendants argue that Nurse Lowell-Pangello acted reasonably, appropriately, and within the standard of care when providing medical care to Mr. Marshall (Dkt. 66 at 17). Nurse Lowell-

Pangello provided care to Mr. Marshall on two instances—to refill his medications and to treat his shoulder. *Id.* Mr. Marshall asserts that Nurse Lowell-Pangello came to his cell on August 22, 2022, and told him she would discuss his feet condition with Dr. Byrd, but never did (Dkt. 1 at 7). He argues that she did not talk to Dr. Byrd because his medical record show that "[Nurse Lowell-Pangello] never talked to anyone except [him] about [his] issues of chronic pain" *Id.* Defendants counter by arguing that Mr. Marshall did not raise concerns regarding his feet or the loss of his medical devices at either of the visits with Nurse Lowell-Pangello (Dkt. 66 at 17). The medical records do not mention any conversation about Mr. Marshall's feet between him and Nurse Lowell-Pangello (Dkt. 65-2 at 20–21, 25–26).

While it is disputed whether Nurse Lowell-Pangello and Mr. Marshall talked about Mr. Marshall's feet and whether she relayed such discussions to Dr. Byrd, this dispute is not material. Even if Nurse Lowell-Pangello did not relay their discussions to Dr. Byrd, such failure would not amount to anything more than negligence and deliberate indifference requires more than negligence. *Wexford*, 18 F.4th at 241. Further, a one-time failure to discuss Mr. Marshall's condition with Dr. Byrd, does not rise to sufficient personal responsibility required for deliberate indifference. A single failure does evidence a constitutional deprivation at Nurse Lowell-Pangello's direction, knowledge or consent. *Crowder*, 687 F.2d at 1005. Accordingly, a reasonable jury would not conclude that Nurse Lowell-Pangello was deliberately indifferent. Summary judgment is **granted** as to Nurse Lowell-Pangello.

3, Nurse Willis

Defendants argue that Nurse Willis did not provide any medical care to Mr. Marshall and therefore, could not have been deliberately indifferent (Dkt. 66 at 17–18). In his Complaint, Mr. Marshall reports that Nurse Willis came to his cell and gathered information about his pain in his

feet (Dkt. 1 at 13–14). He concedes that Nurse Willis attached the report of their discussions with his medical records, as he had asked her to do, but alleges that she only came to see him "to stop any chance of [Mr. Marshall] receiving the replacement devices [he] kept requesting" or "to cover up and mask her co[workers] inadequate care for [his] health." *Id.* at 14. These assertions are mere speculation and are not supported by any evidence. Mr. Marshall's medical records show that Nurse Willis saw him following his request for health care in which he was seeking a physician appointment, and Nurse Willis confirmed that an appointment had already been provided. (Dkt. 76-1 at 13). There is no evidence of deliberate indifference by Nurse Willis. Based on the designated evidence, a reasonable jury could not conclude that Nurse Willis acted with deliberate indifference. Accordingly, summary Judgment is **granted** as to Nurse Willis.

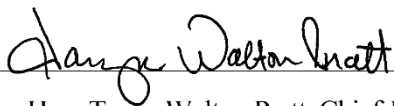
IV. CONCLUSION

For the reasons described above, the Defendants' Motion for Summary Judgment (Dkt. 65) is **GRANTED in part and DENIED in part**. The Motion is **granted** as to Nurse Lowell-Pangello and Nurse Willis, and all claims against Nurses Lowell-Pangello and Willis are **dismissed**. The Motion is **denied** as to Dr. Byrd, and the claims against him shall be resolved by settlement or at trial.² **The clerk is directed** to include with his copy of this Order, a copy of the form "Motion for Assistance with Recruiting Counsel," if Mr. Marshall desires such assistance. **The Clerk is further directed to terminate Nurse Lowell-Pangello and Nurse Willis** from this action.

Finally, the Magistrate Judge is requested to schedule this matter for a status conference.

SO ORDERED.

Date: 3/27/2025


Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

² The claims against Kristina Stone also remain pending.

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