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COMMENT

DELIBERATE INDIFFERENCE AND THE LIABILITIES OF MEDICAL PROFESSIONALS IN PRISONS: *LUCAS V. TURN KEY HEALTH CLINICS*

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I. Introduction

The legal system is facing an influx of litigation brought by inmates related to a lack of mental health services, physical and sexual abuse by jail staff, and overall insufficient medical treatment. Lawsuits over inmate medical treatment have been brought to the forefront, giving rise to new regulations and protocols that officials must follow to ensure the safety of inmates.¹ These protocols ensure that the medical needs are addressed properly while inmates are a ward of the state and protect institutions from

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I dedicate this comment to my father, Henry R. Cole, who is the wisest and greatest man that I have ever known. And to my mother, Cecelia J. Cole, who is not only my greatest teacher, but my most trusted confidant. To my sister, Julia M. Cole, you are my soulmate and best friend. A special thanks to the Honorable Scott A. Sells and Lori A. McLeod for your guidance, friendship, and support. I thank all my family and friends sincerely for your unconditional encouragement and strength.

1. Farmer v. Brennan, 511 U.S. 825, 828 (1970).

liability.² Although there are measures in place to reduce the medical harm inmates face, there are countless instances where officials are deliberately indifferent.³ This results in substantial harm and costly litigation.⁴

The Tenth Circuit held that a delay in medical care resulting in harm can be a violation of the Eighth and Fourteenth Amendments if certain factors are met.⁵ These types of issues arise in correctional facilities when medical staff or officers fail to seek or provide adequate care for an inmate that results in deliberate indifference.⁶ There are measures in place that shield correctional institutions from municipal liability so long as the policies or customs in place are not causally related to the constitutional violation.⁷ Further protections from the Oklahoma Governmental Tort Claims Act (the “OGTCA”) exempt employees of the State of Oklahoma from tort liability.⁸

The Equal Protection Clause can be implicated when an act of discrimination is alleged in instances of delay or inadequate medical care.⁹ When these claims are brought, the complaint must be supported by sufficient facts to survive a motion to dismiss.¹⁰ Courts have established that in order to state a claim there must be a “reasonable inference that the defendant is liable for the misconduct alleged.”¹¹ District courts accept well-pleaded complaints as true and do not consider conclusory statements.¹² As long as there are sufficient facts alleged and considered plausible, the pleading standard is met.¹³ In *Lucas v. Turn Key Health Clinics*, Michelle Caddell experienced substantial harm from the inadequate medical care provided when she was housed at a correctional facility in Tulsa, Oklahoma.¹⁴

2. *Id.* at 835.

3. *Id.*

4. *Id.*

5. *Quintana v. Santa Fe Cnty. Bd. of Comm’rs*, 973 F.3d 1022, 1028-29 (10th Cir. 2020).

6. *Id.* at 1051-52.

7. *Crowson v. Wash. Cnty.*, 983 F.3d 1166, 1177-78 (10th Cir. 2020).

8. OKLA. STAT. tit. 51, § 155 (2011).

9. *Crowson*, 938 F.3d at 1178; U.S. CONST. amend. XIV, § 1.

10. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11. *Id.*

12. *Id.*

13. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

14. *Lucas v. Turn Key Health Clinic*, 58 F.4th 1127, 1133 (10th Cir. 2023).

II. Historical Background

The Eighth Amendment protects against cruel and unusual punishments.¹⁵ Prisoners have rights, but they are limited due to their incarceration status.¹⁶ Although prisoners' liberties are limited, they are still afforded "adequate food, clothing, shelter, and medical care, and [prison officials] must 'take reasonable measures to guarantee the safety of the inmates.'"¹⁷ The Eighth Amendment places restraints and imposes duties on prison officials to ensure "humane conditions" are provided to prisoners.¹⁸ When there is an alleged breach of a these duties, courts look to the officials' state of mind and determine whether there was "deliberate indifference" to the safety and wellbeing of the inmate.¹⁹

The deliberate indifference standard has a subjective and objective component.²⁰ The subjective component can be satisfied by either "failure to properly treat a serious medical condition . . . or as a gatekeeper who prevents an inmate from receiving treatment or denies access to someone capable of evaluating the inmate's need for treatment[.]"²¹ The objective component is proven if the deprivation is sufficiently serious and it is obvious that even a lay person would recognize the necessity to seek a doctor's attention.²² Both the objective and subjective components must be proven to be liable for deliberate indifference.²³ The Fourteenth Amendment is also applicable to deliberate indifference claims for pretrial detainees such as in *Lucas*.²⁴

The *Lucas* court determined that the claims of deliberate indifference in the Ms. Caddell's complaint survived a motion to dismiss.²⁵ This was because satisfaction of the subjective component was at least plausible given the circumstances of the case, and the defendants conceded satisfaction of the objective component.²⁶ Evidence revealed that the doctor's conduct on its face was sufficient to state a claim because there

15. U.S. CONST. amend. VIII.

16. See *Farmer*, 511 U.S. at 832.

17. *Id.* at 826.

18. *Id.*

19. *Id.*

20. *Id.* at 838.

21. *Lucas*, 58 F.4th at 1137.

22. *Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir. 2005).

23. *Id.*

24. *Lucas*, 58 F.4th at 1135.

25. *Id.* at 1136.

26. *Id.* at 1136-37.

was a prolonged lack of adequate treatment and an outright refusal to acknowledge the seriousness of Ms. Caddell's medical ailments.²⁷ Therefore, Ms. Caddell's claim alleged sufficient facts to plead deliberate indifference based on her medical condition and the actions of medical staff.²⁸ However, the court properly concluded there were not sufficient facts to support the Equal Protection or municipal liability claims because Ms. Caddell's statements pertaining to those claims were conclusory and lacked a causal connection to the harm she suffered.²⁹ Further, the court correctly concluded that the dismissal of the tort claim under the OGTC was premature.³⁰

III. The Case

On December 27, 2018, Ms. Caddell was arrested by the Tulsa County Sheriff's Office.³¹ While in custody, she was screened for sexually transmitted diseases and tested positive for chlamydia.³² Six months later, she filed a complaint with jail medical staff regarding vaginal discharge, and at this time she had previously filed multiple requests seeking further medical attention.³³ Throughout the weekend of July 5, 2019, she sought medical attention due to hip and thigh pain three separate times.³⁴ Finally, one week later, a nurse practitioner treated Ms. Caddell and noted that she had experienced pain for four weeks prior to being seen.³⁵ Ms. Caddell continued to experience poor health and complained of a blood clot.³⁶ On August 5, 2019, Dr. Meyers evaluated Ms. Caddell and ordered blood work to be taken due to her complaints of hip pain and "heavy menstrual bleeding."³⁷ Dr. Myers indicated she may be anemic, but otherwise found her to be healthy.³⁸ Five days later, Ms. Caddell again notified staff of her discharge, and the jail nurse requested a culture.³⁹ The results of the blood

27. *Id.* at 1143.

28. *Id.*

29. *Id.* at 1144-46.

30. *Id.* at 1148.

31. *Id.* at 1134.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

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work revealed she had a high white blood cell count, but Dr. Myers dismissed the results and did not conduct a follow-up.⁴⁰

On August 14, 2019, the culture result revealed “E. Coli growth” which indicated disease.⁴¹ Ms. Caddell was only prescribed Tylenol for her ailments, which did not treat her symptoms.⁴² Two days later, she again sought medical treatment for her excessive bleeding; four days after that, Dr. Myers noted that all her issues had resolved.⁴³ However, on August 24, Ms. Caddell complained to the nursing staff about the continued discharge and trouble using the restroom.⁴⁴ Two days later, she filed another complaint and apologized for the continued complaints, but she felt as if “something [was] wrong with [her] and [she] hurt bad.”⁴⁵ Dr. Myers evaluated her the next day and noted that her complaints “do not fulfill medical logic.”⁴⁶ Dr. Myers did not fulfill her request for additional pain medication, and indicated she was abusing the medical system.⁴⁷ By September 15, a nurse noted that Ms. Caddell had experienced symptoms for ten months and submitted a referral to an obstetrician.⁴⁸ The referral was denied by the jail’s administrator because the excessive bleeding could not be verified.⁴⁹

The following week, Ms. Caddell’s blood work again revealed abnormal results with a drop in hemoglobin levels and internal bleeding.⁵⁰ On September 27, Ms. Caddell was finally seen by an obstetrician; additional tests revealed she had “invasive cervical cancer,” but another test was needed to confirm.⁵¹ The following week, Ms. Caddell reported that she experienced extreme pain, but she was not seen again by medical staff for four weeks despite profuse bleeding and discharge of tissue.⁵² Ms. Caddell was transferred to the hospital due to the excessive bleeding and given morphine for her pain.⁵³ The doctors revealed she had stage three

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 1135.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

cervical cancer.⁵⁴ Ms. Caddell was released from custody a few days later to treat her cancer, but she tragically died on August 16, 2020.⁵⁵

A. Procedural History

An action was brought against Dr. Myers, the medical clinic where Ms. Caddell was seen, and the Tulsa County Sheriff for “deliberate indifference under the Eighth and Fourteenth Amendments.”⁵⁶ Claims of wrongful death, negligence, and violations of the Equal Protection Clause were all raised.⁵⁷ The defendants filed a motion to dismiss, which the district court granted for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).⁵⁸

The court reasoned that the deliberate indifference claim was actually a claim for medical malpractice because medical staff provided “a litany of medical treatment.”⁵⁹ Therefore, there was no constitutional violation, and the defendants could not be liable through the municipality.⁶⁰ The court indicated that the Equal Protection Clause violation did not present any causational factors that would link the defendants’ conduct to Ms. Caddell’s “treatment.”⁶¹ The district court also found that Dr. Myers could not be held liable on state law claims under the OGTCa.⁶²

B. The Court’s Analysis

The Tenth Circuit reviewed the action de novo and accepted the allegations in the complaint as true.⁶³ The court first addressed the deliberate indifference claim and then analyzed the municipal liability and OGTCa issues.⁶⁴

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 1135-36.

59. *Id.* at 1135.

60. *Id.*

61. *Id.* at 1135.

62. *Id.* at 1136.

63. *Id.*

64. *Id.*

i. Deliberate Indifference

The court applied the deliberate indifference standard to Ms. Cadell's case and held that the lower court's dismissal was not proper because Dr. Myers failed in his role as a gatekeeper.⁶⁵ The court correctly held that Ms. Caddell sufficiently stated a plausible claim of deliberate indifference because not only was Ms. Caddell faced with a serious medical condition, but Dr. Myers also knowingly disregarded her illness.⁶⁶ This inaction resulted in delaying further treatment.⁶⁷ In analyzing the seriousness of the condition, courts find that the objective component is satisfied if a physician would require treatment, or it is so obvious that a lay person would recognize the serious need of medical attention.⁶⁸

The court pointed to the obvious indication that Ms. Caddell's medical condition was sufficiently serious due to the amount of blood she was losing, the agonizing pain she was experiencing, the detection of disease in her lab work, and her continued health decline.⁶⁹ The defendants conceded that Ms. Caddell's condition was not only "sufficiently serious" to a physician, but also recognizable to a lay person.⁷⁰ The obviousness of the need to seek further treatment was blatantly disregarded; and while Ms. Caddell did receive medical care, it was inadequate in comparison to the seriousness of the symptoms she experienced.⁷¹ Ms. Caddell was deprived of adequate medical treatment even after she had been diagnosed, which reiterates the fact that the objective component was satisfied.⁷²

The subjective component in Ms. Caddell's case was a significant issue because the standard requires knowledge and "disregards an excessive risk to inmate health [and] safety."⁷³ Dr. Myers responded to Ms. Caddell's excessive bleeding and continued pain by accusing her of abusing the sick call system.⁷⁴ To prove the subjective component, circumstantial evidence is used to determine "whether the risk was obvious" and whether the official failed to take "reasonable measures to

65. *Id.* at 1140.

66. *Id.* at 1141-42.

67. *Id.* at 1141.

68. *Sealock v. Colorado*, 218 F.3d 1205, 1209 (10th Cir. 2000).

69. *Lucas*, 58 F.4th at 1136.

70. *Id.*

71. *See id.*

72. *Id.*

73. *Farmer*, 511 U.S. at 837.

74. *Lucas*, 58 F.4th at 1140.

abate the risk.”⁷⁵ The facts of this case clearly established that Dr. Myers knew of the excessive bleeding and continued pain, but did not take reasonable measures to seek further treatment, directly resulting in Ms. Caddell’s suffering for over ten months.⁷⁶

A medical professional who disregards the seriousness of an inmate’s medical condition can be held liable.⁷⁷ The subjective component is met when there is a “failure to properly treat a serious medical condition or as a gatekeeper who prevents an inmate from receiving treatment or denies access to someone.”⁷⁸ In *Sealock v. Colorado*, the inmate alerted staff that he was profusely sweating, experiencing chest pain, vomiting, and having trouble breathing.⁷⁹ The staff advised the inmate that he could not be seen until the physician arrived.⁸⁰ The inmate and his cellmate expressed concern that he may be having a heart attack, but were told there was nothing they could do for him.⁸¹ The officials advised the inmate not to die on their watch, and refused to drive the inmate to the hospital because it was snowing.⁸² The following day the inmate went to the infirmary because the chest pain had not subsided.⁸³ The physician’s assistant ran an EKG, determined there had been changes in his heart, and ordered an ambulance.⁸⁴

The inmate suffered a massive heart attack and brought suit, which alleged that the denial of immediate care violated his constitutional rights and resulted in “substantial harm.”⁸⁵ The court found that the symptoms the inmate experienced were “sufficiently serious” and satisfied the objective component because they should have prompted officials to seek immediate medical attention.⁸⁶ The subjective component was also satisfied because the official “knew of and disregarded the excessive risk to [the inmate’s] health that could result from the delay.”⁸⁷ The official was informed and subsequently witnessed the symptoms that the inmate

75. *Quintana*, 973 F.3d at 1029-30.

76. *Lucas*, 58 F.4th at 1141.

77. *Mata*, 427 F.3d at 751.

78. *Lucas*, 58 F.4th at 1137.

79. *Sealock*, 218 F.3d at 1208.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 1209.

86. *Id.* at 1210.

87. *Id.*

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was having that corresponded with a heart attack.⁸⁸ The fact that the official failed to seek medical attention out of inconvenience was enough for the court to conclude that he was deliberately indifferent and therefore liable.⁸⁹

Courts have determined that the role of a gatekeeper is to ensure that inmates receive medical care from someone capable of treating them.⁹⁰ In other words, a professional has a duty to refer an inmate to another medical professional during what appears to be a medical emergency.⁹¹ Delay in such treatment or referral can be deemed unconstitutional, and has the potential to exacerbate the symptoms or ailments the inmate is experiencing.⁹² The court in *Lucas* looked at the treatment provided to Ms. Caddell to determine if there was deliberate indifference and whether the symptoms she suffered would be sufficiently obvious to a lay person to state a claim.⁹³ A lay person could easily identify the need for medical attention because of the pain and excessive bleeding Ms. Caddell experienced.⁹⁴ While Dr. Myers did provide care, he failed to provide “additional medical care and a referral.”⁹⁵ Medical staff consistently disregarded Ms. Caddell and left her in debilitating pain. Nursing staff did submit cultures on her behalf, but Dr. Myers disregarded the results and stopped providing her with medication to ease her pain.⁹⁶

Deliberate indifference does not necessarily have to be a complete denial of care when the “need for treatment” arises.⁹⁷ Rather, a claim can be brought if there is a failure to treat properly.⁹⁸ For instance, in *Oxendine v. Kaplan*, an inmate severed his fingertip when his cell door closed on it and the prison’s physician re-attached it.⁹⁹ The physician was not qualified to perform such a procedure, yet they treated the inmate.¹⁰⁰ The prison officials refused to seek “outside specialized medical assistance[.]”

88. *Id.*

89. *Id.* at 1210-11.

90. *Mata*, 427 F.3d at 757.

91. *Id.*

92. *Id.* at 750.

93. *Lucas*, 58 F.4th at 1136.

94. *Id.* at 1138.

95. *Id.* at 1138.

96. *Id.* at 1134-35.

97. *Id.* at 1138.

98. *Id.*

99. *Oxendine v. Kaplan*, 241 F.3d 1272 (10th Cir. 2001).

100. *Id.*

causing the finger to become gangrenous and permanently damaged.¹⁰¹ The inmate was observed for three days while the wound was redressed and the reattached tissue was examined for viability.¹⁰² However, notations from medical staff revealed that the finger turned black and began decaying.¹⁰³ The physician was aware of the condition of the finger, but they did not refer the inmate to a medical specialist until over two weeks had passed.¹⁰⁴ After repeated requests for a specialist, the portion of his finger that was reattached fell off; all the while the physician assured the inmate that the finger was healing properly.¹⁰⁵

The *Oxendine* court noted that inmates rely on officials to treat their medical needs.¹⁰⁶ When their needs are not properly addressed due to a denial of care, unnecessary pain and suffering may occur.¹⁰⁷ Both the objective and subjective components of deliberate indifference were met because the blackening of the finger was “sufficiently serious” that even a lay person would concede the need for additional care.¹⁰⁸ The physician did provide continued care, but his failure to provide a referral that adequately addressed the inmate’s medical needs resulted in permanent disfigurement.¹⁰⁹ These facts were sufficient to substantiate a claim for indifference. The court found that an official may be “held liable when [a] delay results in a lifelong handicap or a permanent loss.”¹¹⁰ Ms. Caddell’s death could have been circumvented had Dr. Myers fulfilled his duty as a gatekeeper in ensuring her medical needs were properly met.¹¹¹ *Oxendine* shows that even though care is provided, it does not insulate liability when a delay or denial of continued care occurs.¹¹² A claim can still be made even if care was given under the gatekeeper theory.¹¹³

In *Lucas*, the court pointed out that “doing nothing” would be an apparent violation and adequate to state a claim.¹¹⁴ However, allowing

101. *Id.*

102. *Id.* at 1278.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at 1276.

107. *Id.*

108. *Id.* at 1278.

109. *Id.*

110. *Id.* at 1278 (quoting *Hunt v. Uphoff*, 199 F.3d 1220, 1224 (10th Cir. 1999)).

111. *Lucas*, 58 F.4th at 1135.

112. *See Oxendine*, 241 F.3d at 1278.

113. *Id.*

114. *Lucas*, 58 F.4th at 1139.

doctors or gatekeepers to prevail in lawsuits for providing inadequate care would create a shield of liability and could result in “prescribing any mild over-the-counter pain reliever, regardless of symptoms.”¹¹⁵ This outcome would be similar to what Ms. Caddell experienced, as she was prescribed over-the-counter pain relievers that did not address or alleviate any of her symptoms.¹¹⁶ She was not prescribed adequate medication, and she was denied further medical treatment that could have identified the cancer.¹¹⁷ Had Dr. Myers and prison officials fulfilled their obligatory duties, Ms. Caddell’s cancer could have been addressed sooner.¹¹⁸ This alone could be adequate to substantiate a claim. The court analyzed the plausibility of the claims, looking at the obviousness and failure to treat in depth.¹¹⁹

The obviousness is comprised in the subjective component and does not have a clear “formulation.”¹²⁰ The “actual knowledge and training” of a medical professional “can be used to show awareness and disregard of a substantial risk.”¹²¹ This is relevant when symptoms are occurring internally, rendering it unlikely that a lay person would understand the severity and need to seek further medical treatment.¹²² In *Plunkett v. Armor Correctional Health Services*, the inmate was booked with a tailbone injury and contracted Methicillin-resistant *Staphylococcus aureus* (known as “MRSA”) in an unsanitary holding cell.¹²³ The inmate suffered extreme pain in his rectum and developed a large, inflamed puss-filled mass.¹²⁴ A nurse gave him Tylenol, but they did not assess his infection.¹²⁵ The following day, the prison doctor observed that the mass had burst and began leaking fluid, but they prescribed more Tylenol and codeine for the pain.¹²⁶

Forty-one hours later, the inmate again complained of immense pain

115. *Id.*

116. *Id.* at 1141.

117. *Id.*

118. *Id.* at 1141-42.

119. *Id.* at 1142-43.

120. *Self v. Crum*, 439 F.3d 1227, 1232 (10th Cir. 2006).

121. *Lucas*, 58 F.4th at 1139 (citing *Plunkett v. Armor Corr. Health Servs., Inc.*, No. 18 CV-125, 2022 WL 889962, at *5 (N.D. Okla. Mar. 25, 2022)).

122. *Id.*

123. *Plunkett v. Armor Corr. Health Servs.*, No. 18-CV-125, 2022 U.S. Dist. Lexis 54673, at *2 (N.D. Okla. Mar. 25, 2022).

124. *Id.* at *3-4.

125. *Id.* at *4.

126. *Id.*

and swelling in his abdomen.¹²⁷ The doctor transferred him to the emergency room and noted that he had an abscess.¹²⁸ The emergency room doctors revealed the inmate had a “massive peri-rectal abscess replete with eggs from parasites, MRSA, and severe sepsis.”¹²⁹ The court found that the doctor “knew of and disregarded an excessive risk” to the inmate’s “health and safety.”¹³⁰ The doctor’s culpability was greater than that of the nurse because of his educational level.¹³¹ The circumstantial evidence was enough to establish plausibility because the doctor had a “stronger ability and obligation than [the nurse] to detect and diagnose the severity of [his] symptoms.”¹³²

In *Lucas*, Ms. Caddell’s complaint alleged that Dr. Myers “noted only that the lab results were normal, and that no follow-up was needed.”¹³³ This contradicts the results of the lab tests because the tests revealed the presence of disease and E-coli growth.¹³⁴ The excessive bleeding, vaginal discharge, and extensive pain had not subsided, yet Ms. Caddell was only given Tylenol for her symptoms—which was later withheld.¹³⁵ The complaint alleged that Dr. Myers indicated the symptoms did not “fulfill medical logic,” accused her of abusing the medical system, and denied her request for additional pain medication.¹³⁶ This case is similar to *Oxendine*, where the inmate was treated for his severed finger that ultimately rotted off because the doctor refused to seek outside medical assistance.¹³⁷ The calls for Ms. Caddell’s referral fell on deaf ears, allowing her condition to go untreated and causing its severity to progress.

The court asserted that the mere presence of care could not defeat a deliberate indifference claim because Dr. Myers dismissed the lab results and her serious symptoms, prescribed only Tylenol, and did not provide any follow-up treatment.¹³⁸ The court properly found that while cervical cancer may not be obvious to a lay person, it is not a prerequisite to satisfy

127. *Id.* at *5-6.

128. *Id.* at *6.

129. *Id.* at *6.

130. *Id.* at *13-14.

131. *Id.* at *15.

132. *Id.* at *15.

133. *Lucas*, 58 F.4th at 1140.

134. *Id.* at 1134.

135. *Id.* at 1140.

136. *Id.* at 1140.

137. *Oxendine*, 241 F.3d at 1278.

138. *Lucas*, 58 F.4th at 1141.

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the subjective component.¹³⁹ To satisfy the subjective component there must be awareness of “substantial risk of harm to her health and safety.”¹⁴⁰ The court concluded that the complaint stated plausible facts to indicate Dr. Myers’ knowledge of the test results and their potential to pose an “obvious and substantial risk” to Ms. Caddell’s health.¹⁴¹

In contrast, a deliberate indifference claim may fail when a doctor monitors an inmate’s condition in accordance with symptoms.¹⁴² In *Sherman v. Klenke*, the inmate notified medical staff that he believed he had a hernia and the prison doctor confirmed this fact.¹⁴³ The inmate was assigned to a lower bunk, restricted from heavy lifting at work, and provided “an abdominal truss for support while standing”¹⁴⁴ The inmate received pain medication, and it was later determined he would need surgery.¹⁴⁵ Despite the treatment, the inmate continued to experience significant pain from the hernia.¹⁴⁶ Accordingly, the doctor continued to prescribe Motrin and Tylenol.¹⁴⁷ Leading up to the surgery, the inmate requested stronger pain medication and was denied.¹⁴⁸

The *Sherman* court held that a deliberate indifference claim “cannot be drawn when an inmate voices a mere[] disagree[ment] with a diagnosis or a prescribed course of treatment.”¹⁴⁹ Inmates have a right to medical care, but “not to the type or scope of medical care he personally desires,” so long as the treatment is in line with the medical condition.¹⁵⁰ The court concluded the treatment provided to the inmate would not support a deliberate indifference claim because his condition was monitored and sufficiently addressed.¹⁵¹

One noteworthy difference in *Sherman* is the fact that the doctor at least provided the minimum requisite treatment, whereas in *Lucas* Ms.

139. *Id.* at 1141.

140. *Id.*

141. *Id.*

142. *Sherman v. Klenke*, 653 F.App’x 580, 587 (10th Cir. 2016).

143. *Id.* at 582.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 583.

149. *Id.* at 586 (quoting *Perkins v. Kan. Dep’t of Corr.*, 165 F.3d 803, 811 (10th Cir. 1999) (internal quotations omitted)).

150. *Id.* (quoting *Henderson v. Sec’y of Corr.*, 518 F.2d 694, 695 (10th Cir. 1975)).

151. *Id.* at 591.

Caddell was denied even the renewal of her pain medication.¹⁵² Although the inmate in *Sherman* experienced continued pain leading up to the necessary surgery, the doctor took minimal steps to alleviate the patient's symptoms.¹⁵³ The doctor provided refills of the inmate's pain medication, which was monitored and increased based on the symptoms he experienced.¹⁵⁴ These facts did not amount to deliberate indifference and were unable to reach the "high evidentiary hurdle" required to support the claim.¹⁵⁵

Lucas mirrors *Plunkett* and *Sealock* because in both cases the inmates' requests for additional treatment were denied. Ms. Caddell asked for continued help and was denied.¹⁵⁶ She experienced symptoms that were inadequately treated for ten months.¹⁵⁷ The court noted that Dr. Myers was "deeply involved[,]” but he did not take reasonable steps to address her medical issues.¹⁵⁸ Ms. Caddell's deteriorating condition should have been an obvious indication to Dr. Myers to seek outside treatment.¹⁵⁹ Dr. Myers was aware of the symptoms she experienced and did not attempt to abate them. This information brought alarm to a nurse who immediately referred her to an obstetrician.¹⁶⁰

The court pointed to the worsening condition of Ms. Caddell and the obviousness that she needed to be referred to a specialist.¹⁶¹ Dr. Myers was not capable of treating Ms. Caddell and had a duty as a gatekeeper to refer her to someone who was "capable of treating her condition."¹⁶² The court properly concluded that Dr. Myers denied her care, accused her of abusing the system, denied additional pain medication, and failed to refer her to a specialist.¹⁶³ These facts alone are sufficient to infer a conscious disregard to an obvious risk to her health.¹⁶⁴

The doctor's role as a provider and gatekeeper were simultaneous, much like in *Oxendine* when the doctor disregarded the fact that the

152. *Lucas*, 58 F.4th at 1135.

153. *Sherman*, 653 F.App'x at 583-84.

154. *Id.* at 582-83.

155. *Id.* at 587 (quoting *Self*, 439 F.3d at 1232).

156. *Sealock*, 218 F.3d at 1208; *Plunkett*, 2022 U.S Dist. Lexis 54673, at *4-5.

157. *Lucas*, 58 F.4th at 1135.

158. *Lucas*, 58 F.4th at 1142.

159. *Id.* at 1142.

160. *Lucas*, 58 F.4th at 1135.

161. *Lucas*, 58 F.4th at 1143.

162. *Id.*

163. *Id.*

164. *Id.* (citing *Self*, 439 F.3d at 1232).

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inmate's finger was decaying because they thought their "treatment" was adequate.¹⁶⁵ The delay in seeking a specialist resulted in the inmate losing a portion of his finger, much like Ms. Cadell's undiagnosed cancer which led to her death.¹⁶⁶ These facts alone were sufficient to allege a claim of deliberate indifference, and the court properly reversed the lower court's dismissal.

ii. Municipal Liability

Qualified immunity protects state officials "from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."¹⁶⁷ In addition to the deliberate indifference claim, Ms. Caddell's complaint on appeal alleged constitutional violations of municipal liability.¹⁶⁸ The court sought to determine whether there was a "systemic failure of medical policies and procedures" that ultimately resulted in affirming the dismissal from the lower court.¹⁶⁹ There were not enough facts to support the claim to hold the jail liable.¹⁷⁰ Essentially, the court could not attribute a lack of policy or procedure that would "causally connect" Dr. Myers' constitutional violation to the jail's protocols.¹⁷¹ The court asserted that to state a claim for municipal liability, there must be "(1) an official policy or custom, (2) causation, and (3) deliberate indifference."¹⁷²

The court indicated that the allegations were conclusory, and there was nothing to support cost-cutting measures that contributed to the harm Ms. Caddell suffered.¹⁷³ The complaint primarily addressed the actions of Dr. Myers.¹⁷⁴ There were no financial incentives to "keep costs low" that could plausibly explain the harm she experienced, nor were there policies or customs identified.¹⁷⁵ Therefore, the complaint facially failed to provide enough facts to conclude that the jail's policies were the cause of her

165. *Oxendine*, 241 F.3d at 1278.

166. *Id.*

167. *Crowson*, 938 F.3d at 1177-78 (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)).

168. *Lucas*, 58 F.4th at 1143.

169. *Id.*

170. *Id.* at 1148.

171. *Id.* at 1144.

172. *Id.* at 1145 (citing *Crowson*, 938 F.3d at 1184).

173. *Id.*

174. *See id.* at 1127.

175. *Id.*

injuries.¹⁷⁶ The heavy burden that must be reached to overcome municipal liability has significant implications. There is a demanding threshold for an injured party to submit “persuasive explanations” as to how a policy or custom contributed to the harm, making it difficult to attribute any liability to state officials.¹⁷⁷ This is evident in Ms. Caddell’s case. While her harm resulted from a lack of interventions, it cannot be specifically attributed to the policies or customs of the jail.¹⁷⁸ This makes for a tough standard to prove and a slim chance at surviving a motion to dismiss.

iii. Equal Protection Claims

The complaint alleged that the actions of Turn Key Health Clinics and the Tulsa County Sheriff violated the Equal Protection Clause of the Fourteenth Amendment.¹⁷⁹ Ms. Caddell’s complaint argued that the “policies caused disparate medical treatment of female detainees . . . and that these policies were enacted to cut costs without serving a legitimate purpose.”¹⁸⁰ In order to allege a violation of the Equal Protection Clause, an inmate must show that they were similarly situated to other inmates who are treated differently, “and that the difference in treatment was not reasonably ‘related to legitimate penological interests.’”¹⁸¹ To state a claim, the discrimination must take place against the individual as well as a class “with respect to a group.”¹⁸² The district court and the appellate court indicated that there were only conclusory statements in Ms. Caddell’s complaint which were “insufficient to state a claim.”¹⁸³

The court concluded that the complaint failed to “show her injuries flow[ed] from the[] alleged discriminatory acts.”¹⁸⁴ Ms. Caddell’s complaint addressed the lack of access to “feminine hygiene products” and “a lack of appropriate treatment for vaginal infections including [urinary tract infections (UTIs)] and human papillomavirus (HPV).”¹⁸⁵ Nothing in

176. *Id.*

177. *Revilla v. Glanz*, 8 F.Supp.3d 1336, 1340 (N.D. Okla. 2014).

178. *Lucas*, 58 F.4th at 1144.

179. *Id.* at 1146.

180. *Id.*

181. *Fogle v. Pierson*, 435 F.3d 1252, 1261 (10th Cir. 2006) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

182. *Lucas*, 58 F.4th at 1146.

183. *Id.*

184. *Id.*

185. *Id.*

the complaint indicated that she was deprived of feminine products, that she had a UTI, or that she had HPV.¹⁸⁶ Essentially, the court concluded the statements were empty claims that were not substantiated by facts within the complaint.¹⁸⁷ The court ruled correctly in determining that she did not sufficiently state a claim because there were no persons to refer the statements to.

The court also addressed the fact that the complaint excluded male inmates who are deprived of such care or given a “different level . . . of care due to cost-cutting” that would substantiate discriminatory policies.¹⁸⁸ The complaint stated, “the jail and Turn Key provided substandard care to female inmates through cost-cutting policies to disincentivize cervical cancer screening[s].”¹⁸⁹ The court determined that the conclusory statements could not survive the motion to dismiss and affirmed the district court’s decision.¹⁹⁰ Although Ms. Caddell did experience a denial of care, which ultimately led to her death, the complaint did not plausibly state she received differential treatment to survive the Equal Protection claim.¹⁹¹

iv. Oklahoma Governmental Tort Claims Act

The OGTCA protects “jail or correctional facility” employees from tort liability.¹⁹² The district court found that Dr. Myers and Turn Key Health Clinics were immune from liability because of their role as “healthcare employees under the OGTCA” for the state law claim.¹⁹³ The district court turned to a footnote in *Barrios v. Haskell County Public Facilities Authority*, which looked at the definition of employee and determined that contracted healthcare staff can be immune from liability under the OGTCA.¹⁹⁴ The district court assumed that Turn Key’s staff and Dr. Myers were immune under the definition, did not conduct an in-depth analysis, and dismissed the claim.¹⁹⁵ However, the appellate court found it premature to conclude that the contracted healthcare staff were immune at

186. *Id.*

187. *See Lucas*, 58 F.4th 1127.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. OKLA. STAT. tit. 51, § 155(25) (2022).

193. *Lucas*, 58 F.4th at 1147.

194. *Barrios v. Haskell Cnty. Pub. Facilities Auth.*, 2018 OK 90, n.5, 432 P.3d 233, 235.

195. *Lucas*, 58 F.4th at 1147.

the motion to dismiss stage, and questioned their ruling because it was based on a footnote that had a “non-binding legal assumption.”¹⁹⁶ As the court pointed out, there are inconsistencies in applying the *Barrios* standard because other courts have “denied immunity at the motion to dismiss stage, but granted it on summary judgment.”¹⁹⁷

Determining whether contracted medical providers are subject to immunity is a relevant question for institutions. On one hand, if they are considered employees they are subject to the protections from tort liability; however, if they are not protected within the meaning of employee, the lack of immunity could deter wrongful medical conduct.¹⁹⁸ In sum, Turn Key and Dr. Myers are immune from liability, and more information would be required to see if they fall within the meaning of employee under the OGTC. ¹⁹⁹ Information regarding their contract with the jail, description of the relationship, and any information describing the type of employment would be relevant to determine if they were acting within the scope of the statute.²⁰⁰ Thus, dismissing the claim before evidence could be submitted regarding tort immunity was premature at the motion to dismiss stage.

IV. Conclusion

The court paid significant attention to the deliberate indifference claim because the allegations against Dr. Myers were plausible enough to state a claim.²⁰¹ The court recognized that while Ms. Caddell did receive care, it was not sufficient to address her medical needs. She was denied access to specialized care at the hands of a doctor who had a duty to not only recognize the seriousness of her condition, but identify when his care was no longer adequate to address her symptoms.²⁰² The seriousness of her condition and the prolonged suffering documented within the complaint was sufficient to reverse the district court’s dismissal and remand for further proceedings.²⁰³ Dr. Myers’ conduct satisfied both components of

196. *Id.*

197. *Id.*

198. *Revilla*, 8 F.Supp.3d at 1340-41.

199. *See Lucas*, 58 F.4th at 1147-48.

200. *See Revilla*, 8 F.Supp.3d at 1336.

201. *Lucas*, 58 F.4th at 1140.

202. *Id.* at 1143.

203. *Id.*

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the deliberate indifference claim.²⁰⁴

The municipal liability and Equal Protection claims were not substantiated by enough facts linking the polices and discrimination to the injury that Ms. Caddell suffered.²⁰⁵ The OGTCA claim established that additional information was necessary to substantiate whether Turn Key Health Clinics and Dr. Myers were protected under the statute from tort liability.²⁰⁶ The court properly addressed Ms. Caddell's case.

204. *Id.*

205. *Id.* at 1144.

206. *Id.* at 1148.