

but thereafter his lawyers were allowed to withdraw at their request. The action was stayed for a period of time, but Ewing was never able to obtain another lawyer.

The defendants have moved for summary judgment and the plaintiff has responded. The case is thus ripe for decision.³

According to his testimony given in a discovery deposition, Ewing first was prescribed OxyContin by Dr. Richard Norton, his physician, in October of 1999 (Ewing Dep. 44-45.) Ewing says that within a month or two after he started taking OxyContin, or by January of 2000, he first realized that it was harming him, because it was making him “feel like a rocket.” (*Id.* at 94-95.) He last received a thirty-day prescription for OxyContin in January of 2001, from Dr. Deborah Barton, who took over Dr. Norton’s practice. Thereafter, he says he suffered for two months from withdrawal, experiencing flu-like symptoms, nervousness, cramps, vomiting, and diarrhea. (*Id.* at 60-61, 139.)

The defendants have submitted in support of their Motion for Summary Judgment a lengthy declaration from Michael F. Weaver, M.D., a professor at the Medical College of Virginia. Dr. Weaver is a board-certified internist who specializes in pain management. After reviewing Ewing’s medical records, Dr.

³ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

Weaver opines that Ewing was not addicted to OxyContin nor did he suffer withdrawal symptoms because of his use of OxyContin. The records reveal that Ewing was prescribed other short-acting opioids while he was receiving OxyContin and thereafter. In addition, Dr. Weaver is of the opinion that Ewing's long documented medical history of anxiety, nervousness, and depression is the more likely cause of his reported difficulties.

Summary judgment is appropriate when there is “no genuine issue of material fact,” given the parties’ burdens of proof at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see* Fed. R. Civ. P. 56(c). In determining whether the moving party has shown that there is no genuine issue of material fact, a court must assess the factual evidence and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *See Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985).

Rule 56 “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and defenses [that] have no factual

basis.” *Id.* at 327. It is the “affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial.” *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993) (internal quotation marks omitted).

Although the moving party must provide more than a conclusory statement that there are no genuine issues of material fact to support a motion for summary judgment, it “need not produce evidence, but simply can argue that there is an absence of evidence by which the nonmovant can prove his case.” *Cray Communications, Inc. v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 393-94 (4th Cir. 1994) (quoting 10A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2720, at 10 (2d ed. Supp. 1994)); *see also Celotex*, 477 U.S. at 325 (“[T]he burden on the moving party may be discharged by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.”).

Once the moving party has met its burden, “the nonmoving party must come forward with ‘specific facts showing that there is a *genuine issue for trial.*’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). The non-moving party’s evidence must be probative, not merely colorable, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 256, and cannot be

“conclusory statements, without specific evidentiary support,” *Causey v. Balog*, 162 F.3d 795, 801-02 (4th Cir. 1998).

Ewing has not met his burden to present evidence that would allow this case to proceed to trial. As pointed out by the defendants in their motion, Ewing has not shown that he suffered an injury as a result of OxyContin. Based on the summary judgment record, it is just as likely as not that Ewing’s symptoms were the result of causes for which the defendants are not responsible.

Accordingly, I will grant the defendants’ Motion for Summary Judgment and enter a final judgment.

DATED: August 19, 2004

/s/ JAMES P. JONES
Chief United States District Judge