NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 20, 2019*
Decided July 3, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-2614

CHRISTOPHER BERRY,
Plaintiff-Appellant,

v.

JEAN LUTSEY, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 17-C-551

William C. Griesbach,
Chief Judge.

O R D E R

Christopher Berry, a Wisconsin inmate, appeals the entry of summary judgment on his Eighth Amendment claim that prison medical staff and administrators were deliberately indifferent to his pain from scoliosis. Because the record undisputedly shows that the healthcare providers applied constitutionally adequate medical

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

judgment to treat Berry, and the administrators permissibly relied on that judgment, we affirm.

We derive the events from the defendants' statement of facts. Berry's response to the defendants' motions for summary judgment did not comply with the Eastern District of Wisconsin's Local Rule 56(b)(2)(B) because Berry did not address their proposed facts. So, like the district court, we accept the defendants' statement of facts where supported by admissible evidence, but still view those facts in the light most favorable to Berry. *Gosey v. Aurora Med. Ctr.*, 749 F.3d 603, 605 (7th Cir. 2014).

Berry's care at Green Bay Correctional Institution began in 2015. A doctor at a previous prison had prescribed restrictions to accommodate Berry's scoliosis, such as a lower bunk, back brace, extra pillow, and supportive shoes. Upon Berry's arrival at Green Bay, Dr. Mary Sauvey continued these restrictions for three months (until February 2016) and scheduled an appointment in January 2016 for Berry to request their extension. At that January appointment, Berry did not request extensions. Afterward, though, he asked that the prison extend his restrictions indefinitely. A nurse responded that Green Bay did not prescribe restrictions indefinitely and reminded Berry that, unless renewed, his restrictions would expire in February.

Medical staff continued to review Berry's need for medical restrictions. Dr. Sauvey examined him in March 2016. She found that Berry had no need for special shoes, but ordered a back brace for him and another appointment in six months. She did not prescribe a low-bunk restriction or extra pillow, so those accommodations were not renewed. Dissatisfied, Berry responded with requests for pain medicine, a low bunk, and an extra pillow. A nurse replied that the doctor "gave you a back brace to help" and that the order for other restrictions had "expired." He was scheduled to see a doctor again on March 21. That visit, however, was cancelled when his unit was locked down that day. Afterward, Berry filed grievances to complain again that his restrictions had expired and that he wanted to see a doctor for back pain. His grievances were dismissed because his medical records showed that he did not need more restrictions, and though the prison was temporarily without a full-time physician—Dr. Sauvey retired in April—Berry would be seen by one "as soon as possible."

Over the next six months, the prison again scheduled Berry to see a doctor. He had an appointment on June 1 to discuss his medical restrictions, but he refused to go. Apparently, a guard (who is not a defendant) had mistakenly told him that it was for an eye exam, not his back pain. A week later, Berry went to health services for a walk-in visit to complain about the missed appointment. A nurse advised him to attend each

scheduled doctor's appointment to learn what it is for, and that he could refuse care at that point. She put him on a waiting list to see a doctor. She also observed that Berry was in no "acute distress" and walked with a "steady … even gait." Berry responded with more requests to see a doctor and renew his restrictions. Nurses responded to each request. They noted that his exams showed no need for the restrictions, that he was on the waiting list to see a doctor, and that he could see a nurse at a walk-in visit if he did not want to wait. Berry did see a nurse in July. She did not reinstate any restrictions but scheduled his next doctor's appointment for September.

Berry saw Dr. Lisa Allen, the prison's new full-time physician, in September 2016. That month matched the time frame that Dr. Sauvey had planned in March for his six-month, follow-up visit. After an exam where Berry walked with a "steady" gait, Dr. Allen prescribed an extra pillow, a low bunk, gel inserts for his shoes, and new pain medicine. She noted that she would reevaluate the restrictions annually. A follow-up was scheduled two weeks later to assess the new pain medication.

Over the next year, Berry requested more accommodations. Upon receiving each request, Dr. Allen or a nurse, along with Green Bay's Special Needs Committee, weighed the need for the restriction against security concerns. Whenever they denied his requests, Berry responded with grievances. Each grievance was dismissed on the basis that medical staff had found that the request was medically unnecessary or that security concerns outweighed any medical need. His chief complaint was that his pain medicine was ineffective. In response to this complaint, a nurse practitioner ordered an MRI and referred Berry to outside experts. Those experts concluded that surgery was not necessary but recommended steroid injections, which Berry received. Throughout this period, the doctors and nurses who evaluated Berry also observed that Berry walked with a "normal" or "steady" gait. By the end of this period, in September 2017, based on test results and pain-management treatments, the prison determined that the "objective evidence" did not support Berry's "subjective" complaints. They terminated many of his restrictions, but continued steroid injections. A prison doctor corroborated these findings two months later.

Berry's next step was this lawsuit. He sued doctors, nurses, and administrators at Green Bay for violating the Eighth Amendment through deliberate indifference to his medical needs. As relevant to this appeal, he focuses on three issues: first, the delay in scheduling him to see a doctor from April to September 2016; second, the prison's decisions to deny him some of the restrictions and treatment that he wanted; and third, the prison administrators' refusal to rectify these problems through his grievances.

Seeing no evidence suggesting that his medical care was reckless, the district court entered summary judgment for the defendants.

On appeal, Berry argues that a jury could find that the defendants deliberately ignored his pain and need for restrictions. To survive summary judgment, Berry needed to submit evidence showing that (1) his medical need was objectively serious, and (2) the defendants consciously disregarded this need. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016) (en banc). "[D]eliberate indifference to prolonged, unnecessary pain can itself be the basis for an Eighth Amendment claim." *Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

We will assume that Berry's scoliosis and pain were serious. Nevertheless, we agree with the district court that no jury could find that the prison staff deliberately ignored his condition. We begin with Berry's complaint about the six months that it took for him to see a doctor between his appointments with Dr. Sauvey in March 2016 and Dr. Allen in September. For two reasons, this wait did not violate the Eighth Amendment.

First, the gap in doctors' visits was rooted in medical judgment. Dr. Sauvey determined, based on her full evaluation of Berry's condition in March (when she ordered a back brace for Berry's back pain and scoliosis), that a follow-up in six months was proper. An exercise of medical judgment like this negates a claim of deliberate indifference. *See Petties*, 836 F.3d at 729. Furthermore, Berry points to no medical evidence contradicting the propriety of a semi-annual review of his condition. And Berry's own neglect in January to ask for an extension of his restrictions, even though that was one purpose of the appointment, reinforces the conclusion that Dr. Sauvey's judgment to schedule a follow-up appointment six months later was not reckless.

Second, during these six months, medical staff did not ignore Berry when he demanded urgent care. Even though the prison was without a full-time doctor for a few of these months, it twice scheduled him to see one, in late March and in June. True, a lockdown cancelled the March visit, and a guard mistakenly told Berry that the June appointment was for his eyes. But Berry cannot attribute those decisions to the defendants personally. *See George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). For example, he has not suggested that the defendants faked the lockdown or told the guard to trick him into ignoring his appointment. And after he ignored his June appointment, the staff still attended to his needs: a nurse rescheduled the appointment, advised him to keep all other appointments, and told him that, at any time, he could see a nurse at a walk-in clinic who would refer him to a doctor if needed. Under these

circumstances, we see no evidence of deliberate indifference. *See Wilson v. Adams*, 901 F.3d 816, 821–22 (7th Cir. 2018) (affirming grant of summary judgment on claim of deliberate indifference to pain where "totality" of care showed proper attention to inmate.)

We next address Berry's contention that the defendants recklessly disregarded his requests for restrictions and complaints of pain. The record belies this contention. Dr. Sauvey prescribed some restrictions when Berry arrived at Green Bay; medical staff told him that the prison does not keep restrictions in place indefinitely; and in September 2016, Dr. Allen restored restrictions for an extra pillow, a low bunk, gel inserts for his shoes, and new pain medicine. When Berry's pain did not abate in 2017, he received an MRI, a visit with outside experts, and steroid injections. Although Berry did not receive every accommodation that he wanted, when the staff did not grant Berry one of his requests, they did so based on the absence of a medical need (such as his normal or steady gait) or their assessment that any asserted need did not outweigh security concerns. Berry points to no evidence that this process is "such a substantial departure from accepted professional judgment, practice, or standards" that a jury could find deliberate disregard of his concerns. *Petties*, 836 F.3d at 729 (quoting *Estate of Cole v. Fromm*, 94 F.3d 254, 261–62 (7th Cir. 1996)); *see also Lane v. Williams*, 689 F.3d 879, 882–83 (7th Cir. 2012) (affirming grant of summary judgment because institutional security can justify some limits on medical care).

Next, we turn to the prison administrators whom Berry faults for not intervening to provide him with more care after he submitted his grievances. The claim fails because no evidence suggests that they had reason to think that the medical staff based their treatment decisions on anything but medical judgment. *See Rasho v. Elyea*, 856 F.3d 469, 478–79 (7th Cir. 2017). In his grievances, Berry offered only his lay opinion that his care was deficient. But a mere difference of opinion with a treatment plan does not require intervention. *See Petties*, 836 F.3d at 729. And administrators may rely on the professional judgment of the medical staff. *See Rasho*, 856 F.3d at 478–79. Therefore, they did not recklessly disregard Berry's Eighth Amendment rights.

One final matter: Berry argues that the district court erred in denying his motion for recruitment of counsel, but we see no abuse of discretion. The district court reasonably concluded based on an evaluation of Berry's pleadings and the record that his deliberate-indifference claims were not so complex in relation to his litigation skills that he required outside assistance to prosecute it. *See Olson v. Morgan*, 750 F.3d 708, 711–12 (7th Cir 2014); *Pruitt v. Mote*, 503 F.3d 647, 654–59 (7th Cir. 2007) (en banc).

We have considered Berry's remaining arguments, and none has merit.

AFFIRMED