

NONPRECEDENTIAL DISPOSITION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 February 8, 2024*

Decided February 12, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1630

JOSEPH HOBAN,
Plaintiff-Appellant,

v.

ARTHUR FUNK, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 17-CV-1274

Colin Stirling Bruce,
Judge.

ORDER

Joseph Hoban, an Illinois prisoner with knee and back pain, appeals the summary judgment rejecting his claims that prison doctors were deliberately indifferent to his medical needs. We affirm.

* 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).

While housed at Pontiac Correctional Center in Illinois, Hoban experienced lower back pain, presumably from an injury he sustained in an explosion while serving in the Marines. Beginning in 2014, Hoban visited Pontiac's medical staff for treatment. Among the staff was Dr. Andrew Tilden, who prescribed Hoban naproxen (a nonsteroidal anti-inflammatory drug) and ordered x-rays.

The following year, Hoban complained of pain in his right knee. Dr. Tilden continued to prescribe naproxen and ordered updated x-rays. Additionally, he prescribed tramadol (a narcotic-like medication used to treat moderate-to-severe pain). The following month, Dr. Tilden diagnosed Hoban with degenerative joint disease. There is no cure, and pain is typically managed with medication.

For two years, Hoban was treated with naproxen and tramadol. When Hoban needed a refill, he would submit a written request for a prescription renewal to Pontiac's health-services provider, Wexford Health Sources. Hoban maintained that, at various points during this two-year period, the defendants—Dr. Tilden, Dr. Arthur Funk (Dr. Tilden's supervisor), attending medical personnel, and Wexford—failed to refill his prescriptions on time and neglected to administer his last refill request, allowing his treatment to “fall below therapeutic levels.”

Hoban brought this deliberate indifference suit under 42 U.S.C. § 1983, asserting that the defendants failed to provide medical care for his knee injury and spinal disease, failed to administer his medication properly (by intentionally allowing his prescriptions to lapse), and—in Wexford's case—implemented a “blind-eye policy” toward the defendants' deliberate indifference.

During the discovery phase, Hoban moved for default judgment, arguing that the defendants and their attorney intentionally interfered with his ability to access medical records. (He specified that they produced only one document in response to his request for all medical records from 2016 onward.) The district court denied the motion, concluding that the defendants sent Hoban his medical records in their initial disclosures, and further, Hoban already possessed many of the relevant records from previous cases he had filed. And even if he did not yet have access to the documents, Hoban had two possible ways to obtain the records on his own: by subpoena to the non-party correctional center, or by submission of a voucher request to the Illinois Department of Corrections.

Soon thereafter, Hoban moved for recruitment of counsel to assist him with issuing a subpoena to Wexford. But the court denied this motion, stating that Hoban could not subpoena a party to the case, and instead would have to submit to Wexford a request for production.

The defendants later moved for summary judgment, supported by a statement of undisputed facts that chronicled Hoban's medical appointments and prescription history—including recurrent examinations of the spine and knee, as well as continuous refills of naproxen and tramadol during the relevant period.

Hoban then sought a subpoena from the court to obtain records from the non-party correctional center. The court granted his request, but Hoban improperly served the subpoena when he forwarded it to a family member to deliver. The district court then issued him a second subpoena form, but he failed to fill in the portion specifying where the materials needed to be sent. Because of these shortcomings, the court directed Hoban to request the medical records by presenting a voucher to the Illinois Department of Corrections. Hoban says that he submitted a voucher to the Department and received only 30 pages of medical records in response, but this is not corroborated by the record.

Hoban filed two additional motions for default judgment based on his belief that the defendants' lawyer obstructed his subpoenas, withheld discovery, blocked his medical care, and lied about the voucher process. The court denied both motions, explaining that Hoban did not provide evidence of the lawyer's misconduct.

Six more times during the proceedings, Hoban sought recruitment of counsel to assist him with discovery. The district court denied each request.

The district court entered summary judgment for the defendants. The court, noting that Hoban failed to respond to the defendants' summary judgment motion (despite having been granted at least 13 extensions), accepted the defendants' statement of undisputed facts and ruled that no reasonable juror could find that the doctors had deliberately ignored his pain. Regarding Dr. Tilden, the court found no evidence that his treatment of Hoban's knee-and-back pain fell below minimal professional standards. As for Dr. Funk, the court found no evidence that he interacted with Hoban, let alone knew of the grievances Hoban submitted, and regardless, a supervisory official is not personally liable for subordinates' acts under a theory of respondeat superior.

Finally, the court concluded that Hoban's claim against the presiding nurse was also unsupported by evidence.

On appeal, Hoban argues that the court prematurely entered summary judgment for the defendants because the defendants interfered with his attempts—by subpoena or voucher—to obtain medical records that he needed to oppose the motion. But the federal rules do not require that discovery be underway or complete before summary judgment can be granted. FED. R. CIV. P. 56; *see Smith v. OSF HealthCare Sys.*, 933 F.3d 859, 864 (7th Cir. 2019). If a party—even a pro se litigant—needs additional discovery to respond to a motion for summary judgment, he may request more time under Rule 56(d), explaining by affidavit or declaration specific reasons why he cannot present essential evidence at the time. *See* FED. R. CIV. P. 56(d); *see Stevo v. Frasor*, 662 F.3d 880, 886 (7th Cir. 2011). But Hoban did not seek Rule 56(d) relief, and regardless, the district court granted him numerous extensions of time to submit his response. Discovery must have an end point, and the court did not abuse its discretion in concluding that Hoban had been allowed adequate time. *See Stevo*, 662 F.3d at 886. As for his insistence that the defendants obstructed discovery, Hoban does not point to any evidence that the defendants interfered with his subpoenas or his voucher to obtain medical records.

Second, Hoban argues that the district court abused its discretion by failing to recruit counsel to assist with “discovery deadlock.” But the court appropriately exercised its discretion to deny the motions based on its determination that Hoban could competently litigate the case, understood the applicable legal standards, had sufficient access to legal resources, and could research and prepare filings. *See Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc).

AFFIRMED