NONPRECEDENTIAL DISPOSITION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 March 13, 2024*
Decided March 14, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1763

DAMEION THURMOND, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 3:19-CV-00995-NJR
REYNAL L. CALDWELL and MICHAEL MOLDENHAUER *Defendants-Appellees*.	Nancy J. Rosenstengel, *Chief Judge*.

O R D E R

Dameion Thurmond, an Illinois inmate, appeals the summary judgment rejecting his claims that a physician and nurse practitioner at the Menard Correctional Center were deliberately indifferent to his hip and back pain. *See* 42 U.S.C. § 1983. The district

* 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).

court concluded that no reasonable jury could find the defendants were deliberately indifferent to his pain. We affirm.

We recite the facts in the light most favorable to Thurmond. *See Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). Thurmond has arthritis in his hip and narrowing spinal disks in his lower back. Based on these conditions, he received prescriptions for ibuprofen, muscle relaxers, and a lower bunk permit.

In February 2015, Thurmond saw a nurse on a sick call because of his intermittent back pain, which he rated as a "four" out of ten. The nurse referred him for further examination, noting only his request for the renewal of his lower bunk permit.

A few days later, Thurmond had a follow up appointment with nurse practitioner Michael Moldenhauer. What transpired at this appointment is disputed. According to Moldenhauer's note from the appointment, Thurmond sought a renewal of his lower bunk permit for "low back issues," but he showed no pain while moving about the room. Thurmond testified, however, that he asked for a refill of his pain medication because of low back and hip pain, and Moldenhauer refused. But it is undisputed that Moldenhauer ordered an x-ray of Thurmond's back and hip and renewed Thurmond's lower bunk permit for three months.

The x-ray, according to a radiologist, showed narrowing spinal disks—a "degenerative" condition that had "little change" since an x-ray taken in 2011—and some worsening of mild osteoarthritis in Thurmond's hip.

In May 2015, Thurmond was seen by a nurse on a sick call. According to her notes from the appointment, Thurmond sought the renewal of his lower bunk permit and a refill of his prescriptions; she sent his past prescription to the pharmacy. She consulted with Dr. Reynal Caldwell, a traveling physician employed by the prison's medical care contractor, who determined based on his review of Thurmond's medical records that Thurmond's mild pain did not warrant renewal of the lower bunk permit.

Thurmond then says he sent the health-care staff a series of communications—a grievance in May 2015 over his dissatisfaction with Moldenhauer and Caldwell's treatment decisions, a letter to Caldwell seven months later requesting pain medication, and a similar letter to Moldenhauer eight months after that. But the prison had no record of these letters. Moldenhauer and Caldwell also testified that they were not informed of the grievance and that they did not receive the letters (or any other communication regarding Thurmond's care).

Thurmond then brought this § 1983 suit for medical deliberate indifference against several of the prison's medical staff and the warden. The district court screened the complaint, *see* 28 U.S.C. § 1915A, and allowed Thurmond to proceed on his claim against Moldenhauer and Caldwell.

The district court ultimately granted the defendants' motion for summary judgment. As the court explained, even if it assumed that Thurmond's pain was a "serious medical condition," no reasonable jury could find that either defendant was deliberately indifferent to his medical needs. With regard to Moldenhauer, the court concluded that Thurmond produced no evidence that the nurse practitioner—who examined him only once, ordering a three-month lower bunk permit and x-rays—treated him inadequately or was aware of his later complaints of pain or need for further treatment. As for Caldwell, the district court explained that no evidence showed that the doctor ignored Thurmond's pain. In the court's view, the evidence showed that Caldwell's conduct—in assuming that the nurse was handling Thurmond's pain prescription, and in denying Thurmond's request for a renewal of his lower bunk permit—at most amounted to negligence, which cannot support a finding of deliberate indifference. Last, there was no evidence that Caldwell was aware of any of Thurmond's later complaints of pain.

To establish deliberate indifference, Thurmond must show that he had an objectively serious medical condition, of which Caldwell and Moldenhauer were aware and intentionally disregarded. *See Farmer v. Brennan*, 511 U.S. 825, 835–37 (1994); *Munson v. Newbold*, 46 F.4th 678, 681 (7th Cir. 2022). And even if Thurmond could show that the defendants were aware of his pain, he also would have to show that their treatment decisions amounted to a constitutional violation—that is, they are "so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment." *Johnson v. Dominguez*, 5 F.4th 818, 825 (7th Cir. 2021). Mere negligence—or even gross negligence—is not enough. *Id.* We review the district court's summary judgment decision de novo. *Munson*, 46 F.4th at 681.

Thurman first argues that the district court wrongly entered summary judgment for Moldenhauer on his deliberate indifference claim. He maintains that the court downplayed the severity of his complaints of pain to Moldenhauer at the February 2015 appointment and ignored his testimony that he requested pain medication after the appointment (through a nurse in May, and in the letter he sent Moldenhauer more than a year later). But even if we accept Thurmond's version of events, no reasonable jury could conclude that Moldenthauer was deliberately indifferent to Thurmond's

condition. The court properly explained that Thurmond offered no evidence that Moldenhauer provided care at the February examination that was in any way constitutionally inadequate, *see Johnson*, 5 F.4th at 826, or that Moldenhauer ever knew—or received a letter the next year— about any recurrence of pain.

Thurmond also argues that the court overlooked evidence of Caldwell's deliberate indifference in denying his request for pain medication in May 2015. Thurmond points to his declaration, in which he described how his request for medication was the subject of conversation between the nurse and Caldwell. But this evidence does not call into question the court's determination that "Caldwell was under the impression the nurse was taking care of Thurmond's pain medication" or that Caldwell's conduct at most was negligence, not actionable deliberate indifference. *See id*. at 825.

In his reply brief, Thurmond appears to argue that the defendants should have known that he was in continuing pain attributable to the nature of his conditions. Because he advanced it for the first time in his reply brief, he waived the argument. *Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023). Regardless, evidence of his condition alone does not show that the defendants knew his pain was untreated.

We have considered Thurmond's remaining arguments; none merits discussion.

AFFIRMED