NONPRECEDENTIAL DISPOSITION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 9, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2106

DATAEYNA YOUNG,
Plaintiff-Appellant,

v.

WEXFORD HEALTH SOURCES, INC., et al.,
Defendants-Appellees.

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

No. 18-CV-4224

James E. Shadid,
Judge.

O R D E R

Dataeyna Young sued Wexford Health Sources, the healthcare contractor for Illinois prisons, and two doctors at his prison under 42 U.S.C. § 1983 for deliberate indifference to his serious medical condition in violation of the Eighth Amendment. The district court granted the defendants' motion for summary judgment, concluding that

* 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).

Young lacked evidence that the doctors consciously disregarded a significant risk of serious harm and that Wexford could not be liable without an underlying constitutional violation. We affirm.

We review the record in the light most favorable to Young, drawing reasonable inferences in his favor. *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). In April 2018, while incarcerated at Hill Correctional Center in Galesburg, Illinois, Young struck a wall and injured his hand. He was seen by a nurse a few days later. By then, he had a swollen finger on his left hand. The nurse referred him to defendant Dr. Catalino Bautista, who saw him the week after. The doctor diagnosed Young with a fourth finger contusion, ordered x-rays, gave Young a splint for the finger, and scheduled a follow-up appointment to ensure that the finger healed properly. Dr. Bautista did not prescribe anything for pain because Young already had prescriptions for acetaminophen and naproxen for a knee injury.

At the follow-up appointment in May, when Young reported no improvement, Dr. Bautista ordered more x-rays and gave Young another splint, this time with tape to ensure the finger did not move. He also extended Young's prescription for naproxen and gave him a squeeze ball for exercising his hand. The x-rays showed proper alignment of the joints and no fracture. Young saw nursing staff twice later that month, complaining of continued pain and limited mobility in his injured finger. He was told to use ice and warm soaks and to do additional exercises. At the second visit, nursing staff discontinued the splint. Young also met with a non-defendant doctor, who suggested in his notes that Young's finger may be deformed.

Eventually, Dr. Bautista scheduled a collegial review meeting with defendant Dr. Hector Garcia, the national medical director for Wexford, to discuss referring Young to a hand surgeon. The doctors agreed that Young likely had mallet finger but that there was no need to approve a surgery consultation. Without joint misalignment or fracture, the treatment for mallet finger is ice, elevation, anti-inflammatory medication, and splinting. Dr. Bautista once again applied a splint, ordered x-rays, prescribed pain medication, and requested follow-up appointments. After each subsequent appointment, Dr. Bautista noted a lack of mobility and slight inflammation but no other issues. The doctor continued the pain medication and told Young to ice the finger. None of these treatments was fully successful, and Dr. Bautista eventually told Young that his finger was permanently deformed.

Young brought this § 1983 suit against Dr. Garcia, Dr. Bautista, and Wexford Health Sources, which employed both doctors. Young alleged that Dr. Bautista had

exhibited deliberate indifference by continuing treatments that the doctor knew did not work. Young also asserted that both Drs. Bautista and Garcia refused to refer him to a specialist because of cost and that Wexford's policies caused this non-medical decision, allowing for Wexford's liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). As the case proceeded, Young moved twice for the district court to recruit pro bono counsel for him. The court denied the first motion because Young had contacted lawyers only six days prior and so had not given them enough time to respond, and the second motion because it determined Young had shown enough skill in litigating his own case that he did not need counsel.

After discovery, the defendants moved for summary judgment, and the court granted the motion. The court explained that Young did not produce sufficient evidence to allow a reasonable juror to find that either doctor exhibited deliberate indifference and that the *Monell* claim against Wexford could not stand without an underlying constitutional violation.

Young appeals, contesting the summary-judgment ruling and the decisions denying his motions for recruited counsel. Before addressing the merits of the deliberate-indifference claim, we clarify that we consider the record only as it was before the district court at summary judgment. Young appended medical records to his appellate brief, but because he did not submit this evidence in his response to the motion for summary judgment, nor seek to supplement the record on appeal, we will not consider it. *Flynn v. FCA US LLC*, 39 F.4th 946, 953 (7th Cir. 2022).

Young's claims of deliberate indifference do not withstand summary judgment because he lacks evidence that either doctor acted with a culpable state of mind. To establish an Eighth Amendment violation by deliberate indifference, a plaintiff must show that he had an objectively serious medical condition that a defendant knew of and disregarded. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Whiting v. Wexford Health Sources Inc.*, 839 F.3d 658, 662 (7th Cir. 2016). We assume that Young had an objectively serious medical condition, and so Young needed evidence that the defendants acted with conscious disregard to a substantial risk of serious harm. *See Farmer*, 511 U.S. at 837.

On that point, Young falls short. We presume that medical decisions in prisons are made based on medical judgment unless there is some evidence that the doctor "knew better" than to make the decisions he did. *Whiting*, 839 F.3d at 662–63. Bautista conducted several examinations, ordered diagnostic testing, and prescribed multiple treatments including medication, splinting, icing, exercises, and warm soaks. He

testified that these are standard treatments for mallet finger, and Young submitted no admissible evidence to the contrary.

Young, however, argues that Bautista knew the splinting was ineffective yet continued prescribing it instead of recommending a consultation with a hand expert and possible surgical intervention. Continuation of ineffective care can be evidence of deliberate indifference. *Petties v. Carter*, 836 F.3d 722, 729–30 (7th Cir. 2016) (en banc). But the record here shows that Bautista was responsive to Young's complaints, treating the finger continuously, ordering x-rays multiple times to determine whether more aggressive treatment was warranted, and ultimately submitting his case to collegial review when Young's symptoms persisted. Young has provided no evidence that Bautista knew that the splinting was ineffective (he was not the one to discontinue it) or that his decision to eventually reapply the splint was such an inappropriate course of action that it demonstrates Bautista was not making decisions based on medical judgment. *See Brown v. Osmundson*, 38 F.4th 545, 551 (7th Cir. 2022).

Young also failed to support his assertion that Dr. Bautista and Dr. Garcia continued conservative treatments based on cost considerations rather than medical judgment. Young's disagreement with the doctors' conclusion that a referral to a hand specialist was unnecessary is not itself evidence of deliberate indifference. *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Both doctors testified that corrective surgery for mallet finger is not indicated unless there is joint misalignment or fracture, and Young had neither. Given the medical evidence and the doctors' explanations of their decisions, Young did not raise a dispute of fact about whether the doctors made decisions based on cost without exercising professional judgment.

Without evidence of an Eighth Amendment violation by either doctor, Young's claim of *Monell* liability against Wexford Health also collapses. Under *Monell*, Young needed to provide evidence that a Wexford policy or practice caused a violation of Young's constitutional rights. 436 U.S. at 690–91. Because there is no genuine dispute of material fact regarding the doctors' mental states, Young cannot establish Wexford's liability under § 1983. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). This conclusion holds even if we assume that Young properly put evidence of Wexford's cost-containment policies before the district court, something that the appellees contest. The content of Wexford's policies is immaterial because there is no evidence that the doctors failed to exercise their medical judgment or otherwise acted with deliberate indifference.

Finally, Young argues that the district court abused its discretion by failing to recruit counsel to assist him. When faced with such a request, the district court must consider whether the plaintiff made a reasonable attempt to obtain counsel independently, and if so, whether the plaintiff appears competent to litigate the case himself given the difficulty of the case. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007) (en banc). That occurred here. In response to the first motion, the district court sensibly concluded that Young had not yet made reasonable efforts to obtain representation on his own because he did not allow the lawyers he contacted time to respond. The court denied the second request because it determined that, based on his management of the case thus far, Young was competent to continue to litigate the case himself. The court explained that Young had, up until that point, evaded dismissal at screening and competently responded to the defendants' motion for summary judgment. Neither of these individualized assessments was an abuse of discretion. *See Watts v. Kidman*, 42 F.4th 755, 767 (7th Cir. 2022); *Mejia v. Pfister*, 988 F.3d 415, 419 (7th Cir. 2021).

AFFIRMED