

NONPRECEDENTIAL DISPOSITION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 August 16, 2023*

Decided August 18, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2507

CHRISTOPHER DIXON,
Plaintiff-Appellant,

v.

SHERRI FRITTER and DIANE THEWS,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of Indiana,
South Bend Division.

No. 3:20-CV-155-JD

Jon E. DeGuilio,
Judge.

ORDER

Christopher Dixon, an Indiana state prisoner with respiratory problems, appeals from a summary judgment rejecting his claims of medical deliberate indifference. *See* 42 U.S.C. § 1983. 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).

In October 2018, Dixon, housed at Indiana State Prison in Michigan City, Indiana, submitted a healthcare-request form seeking evaluation of, and treatment for, sleep apnea—a diagnosis he had received before being incarcerated. Sherri Fritter, the prison’s Health Services Administrator, asked Dixon to help her identify where she could obtain prior medical records to substantiate his diagnosis and facilitate his treatment. Fritter later testified that she did not otherwise interact with Dixon about his sleep apnea or need for treatment, and it is unclear whether Dixon provided Fritter the information she requested. That same month, Diane Thews, an Advance Practice Nurse, saw Dixon for a routine visit concerning other health issues. The nurse’s contemporary notes did not indicate that Dixon raised concerns about his sleep apnea or need for treatment.

Dixon sued Fritter, Thews, and other prison staff for ignoring his requests to be evaluated and treated for sleep apnea. The district court screened his complaint, *see* 28 U.S.C. § 1915A, and allowed him to proceed on a deliberate indifference claim against only Fritter and Thews. Dixon then repeatedly moved for assistance in recruiting counsel. The court, noting that Dixon’s filings were coherent and that Dixon appeared competent to litigate himself given the limited nature of his claims, denied his request.

The court granted the defendants’ motion for summary judgment, noting that no reasonable jury could conclude that either Thews or Fritter was deliberately indifferent to Dixon’s medical needs. With regard to Thews, the court explained that Dixon offered no evidence that she was aware of Dixon’s sleep apnea and, even if she were, he introduced nothing to show that she knew or had reason to know he sought evaluation and treatment for his sleep apnea in October 2018. As for Fritter, the court explained that undisputed evidence showed that she responded reasonably to Dixon’s October 2018 request for treatment by requesting additional records to verify his condition and facilitate treatment.

On appeal, Dixon primarily addresses a different issue entirely—the confiscation of a continuous positive airway pressure (CPAP) machine by a Lieutenant Lott. But we will not consider arguments raised for the first time on appeal except in rare circumstances inapplicable here. *See Frazier v. Varga*, 843 F.3d 258, 262 (7th Cir. 2016).

To the extent that Dixon challenges the summary judgment ruling, no reasonable jury could, on this record, conclude that these two defendants were deliberately indifferent to an excessive risk to Dixon’s health. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Dixon needed to provide evidence that the defendants knew of but deliberately disregarded his serious medical needs. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir.

2014). But as the district court rightly explained, Dixon introduced nothing to suggest that Thews—whom he visited for a matter unrelated to sleep apnea—was aware of his diagnosis. Nor does his evidence suggest that Fritter ignored his request for treatment when she acted within her limited authority by asking him to help her obtain outside medical records to substantiate his condition.

Dixon also contends that the court wrongly refused to recruit counsel to represent him. But the court acted well within its discretion to deny the request, *see Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (en banc), determining based on the quality of Dixon’s filings and the complexity of the case that he was competent to litigate himself.

AFFIRMED