

**NONPRECEDENTIAL DISPOSITION**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 October 16, 2023\*

Decided October 17, 2023

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2669

GREGORIO COLIN,  
*Plaintiff-Appellant,*

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

*v.*

No. 19-cv-494-DWD

GARY GERST and HECTOR GARCIA,  
*Defendants-Appellees.*

David W. Dugan,  
*Judge.*

**ORDER**

Gregorio Colin, an Illinois state prisoner who injured his left foot, appeals from a summary judgment rejecting his claims of medical deliberate indifference. *See* 42 U.S.C.

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\* 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).

§ 1983. Because the evidence undisputedly shows that the defendants did not deliberately disregard Colin's need for care, we affirm.

In July 2018, Colin twisted his left ankle playing soccer. A nurse promptly gave him pain medication, ice, and crutches. Three days later, Colin complained that the swelling and pain had worsened and that he could not walk. Physician's assistant Gary Gerst, noting that Colin was in no apparent distress, ordered X-rays of the left foot and ankle, prescribed ibuprofen, and instructed Colin to refrain from placing weight on his left leg and to continue using crutches. According to Colin, Gerst told him that the foot would heal on its own.

The X-rays, taken two days later, revealed that Colin had a broken bone behind the smallest toe on his left foot. A doctor ordered a splint and then referred a request for an orthopedic evaluation to collegial review—the process through which treating doctors consult with non-examining physicians from the prison's healthcare services contractor (Wexford Health Sources, Inc.). During that review, Dr. Hector Garcia, then Wexford's National Medical Director, denied the referral. Dr. Garcia opined that (1) fractures like Colin's typically heal on their own with conservative treatment, including over-the-counter pain medications; (2) any damage the fracture causes to surrounding soft tissues, like tendons, is typically also resolved without surgical intervention; (3) Colin did not need to see a specialist, given that the broken bone appeared to be in good alignment and he was already receiving the necessary treatment; and (4) a repeat X-ray in a week would nevertheless be warranted. An X-ray was taken and revealed no significant change.

Colin continued to complain of pain over the next month, and Dr. Garcia—after another collegial review—approved the referral to an orthopedic surgeon. Colin saw a specialist who opined that the fracture should heal with conservative treatment in about four weeks. When the fracture healed, Colin still had some tenderness in his foot, so the specialist recommended that an MRI be taken. The MRI revealed that Colin had a split tendon tear. (The record does not reflect whether the fracture and the tendon injury were related.) The specialist later suggested seeking a second opinion. Colin then saw a second specialist, who repaired his torn tendon surgically.

Colin sued Gerst, Dr. Garcia, and other prison staff for delaying treatment after he complained of severe pain and then denying the initial referral to a specialist. The district court screened Colin's complaint, *see* 28 U.S.C. § 1915A, allowed him to proceed on a deliberate indifference claim against only Gerst and Dr. Garcia, and recruited counsel for him.

The court granted the defendants' motion for summary judgment, explaining that no reasonable jury could conclude that either Gerst or Dr. Garcia was deliberately indifferent to Colin's medical needs. The court noted that Gerst, who did not perceive Colin to be in any apparent distress, ordered X-rays, prescribed medication to Colin, and instructed Colin not to bear any weight on his left leg and to continue using crutches. The court found no indication that Colin suffered any additional harm by waiting two days after his visit with Gerst to have X-rays taken. The court also found no disputed facts over Dr. Garcia's conduct. According to the court, Colin introduced no evidence that Dr. Garcia delayed access to initial treatment, continued a course of inappropriate treatment, or denied the initial referral out of any intent to cause harm or delay necessary treatment.

On appeal, Colin insists that delays in treatment exacerbated his pain and amounted to deliberate indifference. But no reasonable jury could, on this record, conclude that Gerst or Dr. Garcia was deliberately indifferent to an excessive risk to Colin's health. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Colin needed to provide evidence that these defendants knew of but deliberately disregarded his serious medical needs. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Regarding Gerst, there is no indication that he ignored Colin's complaints of pain, that he could have seen Colin or scheduled the X-rays sooner, or that any delay in the X-rays harmed Colin. Instead, the record reflects that Gerst promptly administered conservative medical treatment, which later was confirmed by Dr. Garcia and the first specialist to be appropriate for this type of injury. (When deposed, the specialist explained that injuries like Colin's tend to get better on their own with reduced activity and that a delay in doing an initial X-ray would not likely lead to complications.)

As for Dr. Garcia, we "defer to a medical professional's treatment decision 'unless no minimally competent professional would have so responded under those circumstances.'" *Lockett v. Bonson*, 937 F.3d 1016, 1023 (7th Cir. 2019) (internal quotations omitted). Here, no reasonable factfinder could infer that Dr. Garcia acted outside the bounds of accepted medical standards: He denied the request for a referral to a specialist only after he determined that Colin's fracture was in good alignment and that Colin was receiving the necessary treatment.

Colin also asserts that his appointed counsel was ineffective. He argues that counsel should have bolstered his case by filing a supplemental complaint under Federal Rule of Civil Procedure 15(d) or marshaling the opinion of the second specialist, who, Colin asserts, told him that the delay in treatment left his foot deformed. But there is no Sixth Amendment right to effective assistance of counsel in civil cases. *Diggs v. Ghosh*, 850 F.3d 905, 911 (7th Cir. 2017).

AFFIRMED