NONPRECEDENTIAL DISPOSITION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 22, 2024*
Decided March 26, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1278

JOHN LOY,
Plaintiff-Appellant,

v.

GREGG SCOTT, et al.,
Defendants-Appellees.

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

No. 19-4226

James E. Shadid,
Judge.

O R D E R

John Loy, a civilly detained resident at the Rushville Treatment and Detention Facility in Illinois, fell while climbing out of his top bunk bed. He later sued several staff members, claiming that they violated his rights under the Fourteenth Amendment when they failed to issue him a low bunk permit before and after his fall. *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. The district court entered summary judgment for the defendants. Because the evidence would not permit a reasonable jury to conclude that the defendants' actions toward Loy were objectively unreasonable, we affirm.

We recite the facts in the light most favorable to Loy, the nonmoving party. *See Kemp v. Fulton Cnty.*, 27 F.4th 491, 492 (7th Cir. 2022). Loy, who is elderly, has been civilly detained at Rushville since 2001. He has a 50-year-old arm fracture that was repaired with implants. In January 2017, Loy wrote to Rushville's Rooming Committee and asked for a low bunk permit. Loy did not realize that only the medical department was authorized to issue permits; the Rooming Committee was responsible only for placing residents in rooms that accommodated any documented medical restriction. Loy did not hear back from the Rooming Committee after sending his request.

In June 2018, Loy visited Dr. David Marcowitz because his left elbow appeared brown and swollen. As Loy recalls, he told the doctor about "increasing problems" with his left arm and asked for a bottom bunk permit. Dr. Marcowitz "implied" that a permit would be forthcoming. (Dr. Marcowitz denies that Loy expressed the need for a low bunk permit.) The doctor ordered an X-ray of Loy's arm to confirm that Loy had not re-injured it. The X-ray revealed that Loy had a non-united fracture and osteoarthritis in his elbow but showed no acute fracture or dislocation. After the visit, Dr. Marcowitz also prescribed Tylenol.

When Loy did not receive word about a low bunk permit, he again wrote to the Rooming Committee, explaining that he was having problems with his arm, that an X-ray had been taken, and that he needed a bottom bunk. The committee did not respond.

For the next few months, Loy continued to see Dr. Marcowitz for other routine medical care: twice in July for knee pain, once in August for a renewed prescription, and once in September for Loy's annual physical. Loy did not raise the issue of a permit with Dr. Marcowitz at these appointments.

One year after Loy's only appointment with Dr. Marcowitz about his arm, when Loy was 70 years old, he fell while descending from the top bunk. He was treated at a nearby hospital for injuries to his knee, hip, elbow, and head. Before he left, he told the nurse on duty at Rushville that he thought his foot slipped on a metal stool he used to climb down; the nurse wrote in the incident report that Loy fell because he stepped on a stool that swivels. (He later denied that any stool in the facility swivels but does not deny that he used other furniture to climb down from his bunk.)

Two days later, Loy visited Dr. Marcowitz, who authorized a bottom bunk permit the same day. But weeks passed without any change to Loy's sleeping arrangement. Over the next three weeks, Loy filed two grievances about the need to improve the safety of Rushville's bunks. In one, he described his fall and requested that Rushville make "climbing in and out of the top bunk safe." A grievance examiner reviewed the nurse's incident report about Loy's fall and responded that Loy should use the bunk's ladder instead of a swivel stool to climb out of the bunks. Weeks later, Loy repeated his request in a second grievance. This time, a grievance examiner investigated and learned that the Rooming Committee had recently moved him to a bottom bunk (approximately three weeks after his fall). She thus recommended dismissing the grievance, and the administrators who reviewed his appeal agreed.

Believing that he should have received a bottom bunk permit much sooner, Loy brought constitutional claims against Dr. Marcowitz, the grievance examiners and the reviewing administrators, and members of the Rooming Committee. The district court screened his complaint under 28 U.S.C. § 1915(e)(2), and allowed him to proceed on two claims under the Fourteenth Amendment: (1) that Dr. Marcowitz and the committee failed to provide him a low bunk permit prior to his fall, even though they knew that he was elderly and had an injured arm; and (2) that Dr. Marcowitz and the defendants who reviewed his grievances unreasonably failed to give him a low bunk permit immediately after learning of his accident.

The defendants moved for summary judgment, and the district court granted their motions. First, the district court found that Loy had not shown that the Rooming Committee members and the grievance officials were personally involved in the incidents. He had some evidence that he met the criteria for a bunk permit—for example, he was older than 65—but he did not establish that the members knew the criteria, were aware he had requested a permit, or had the authority to issue one. Additionally, Loy lacked evidence that any of the officials who reviewed his grievances were responsible for the delay in his transfer to a bottom bunk after the doctor authorized it. Loy's grievances focused on the safety of the bunks and did not mention his need for a bottom bunk or refer to his permit.

The district court also concluded that no reasonable jury could find that Dr. Marcowitz provided objectively unreasonable medical care. The court credited Loy's assertion that Dr. Marcowitz had implied that he would grant a lower bunk permit. Looking at the doctor's treatment of Loy over time, however, the court observed

that Loy never again asked for a permit or voiced concern about his arm or difficulty using his bunk, though he had multiple subsequent visits with Dr. Marcowitz. Thus, the district court determined that Loy had not presented evidence that a reasonable person would have appreciated a serious risk of injury. After the court entered summary judgment for the defendants, Loy filed a motion for reconsideration, which the court denied.

On appeal, Loy generally challenges the summary judgment decision. We take a fresh look at this ruling, giving the benefit of conflicting evidence and reasonable inferences to Loy. *See Jackson v. Sheriff of Winnebago Cnty.*, 74 F.4th 496, 500 (7th Cir. 2023); *Palmer v. Franz*, 928 F.3d 560, 563 (7th Cir. 2019). Because Loy is a civil detainee, we analyze his claim under the Fourteenth Amendment. *See Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Jackson*, 74 F.4th at 502. To prevail, Loy must demonstrate that the defendants' conduct was "objectively unreasonable." *Jackson*, 74 F.4th at 502. But Loy did not submit evidence sufficient to raise a genuine issue of material fact on this point.

First, no reasonable jury could find that Dr. Marcowitz's treatment was objectively unreasonable. Loy argues that a reasonable person would have realized in June 2018 that he needed a lower bunk permit based on his age and his painful, swollen arm with an incorrectly healed fracture. But our analysis requires us to consider "the totality of facts and circumstances faced by the individual alleged to have provided inadequate medical care." *McCann v. Ogle Cnty.*, 909 F.3d 881, 886 (7th Cir. 2018). In response to Loy's complaints Dr. Marcowitz ordered an X-ray, which showed arthritis but no new fracture to treat, leading the doctor to prescribe Tylenol. Dr. Marcowitz then saw Loy and treated various ailments four more times in the next three months, and Loy did not mention arm pain or the need for a bottom bunk again. Nor did Loy voice any concern in the next nine months before he fell. Loy explains that his childhood and previous incarceration had "conditioned" him not to complain, but the focus here is on what the doctor knew or should reasonably have known. With Loy's lack of complaints and Dr. Marcowitz's otherwise diligent treatment of Loy's medical needs, there is no genuine issue of material fact about whether the doctor acted unreasonably before Loy's accident. *See id.* at 887. The same is true with respect to the doctor's post-accident conduct because Dr. Marcowitz immediately authorized a bottom bunk.

To the extent Loy contests the summary judgment ruling on the ground that the district court impermissibly found that Loy fell because he stepped on a rotating stool, as the first grievance examiner initially believed, the argument is off-target. Although

the incident report contains that statement, the defendants did not promote that theory in their motions, nor did the court credit that theory in its rationale. Regardless, our review is plenary, and even if we accept that Loy's age and arm injury (and not a swiveling stool) caused him to fall, our conclusion does not change: A reasonable jury could not find that it was objectively unreasonable for Dr. Marcowitz not to authorize a low bunk permit during Loy's single appointment about his arm injury.

Summary judgment was also appropriate for the Rooming Committee members. Although Loy contends that the committee can issue permits and should do so whenever a resident fits the criteria, the undisputed record shows otherwise. The committee members submitted evidence that issuing permits was not a part of their job duties, and Loy produced no admissible evidence to the contrary, so he cannot establish that they unreasonably failed to act. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009). Prison officials are not required to do other employees' jobs to avoid liability under § 1983. *Id.* Similarly, the officials who reviewed Loy's grievances and internal appeals cannot be liable for the conduct underlying the grievances. *See Owens v. Evans*, 878 F.3d 559, 563 (7th Cir. 2017). Loy maintains that these officials ignored the safety hazard instead of investigating his complaints about the bunks, but the record shows that they investigated Loy's accident. They cannot be liable for the general safety of the bunks. *See Hunter v. Mueske*, 73 F.4th 561, 566 (7th Cir. 2023) (quoting *Burks*, 555 F.3d at 595).

Finally, Loy insists that the district court overlooked his assertions that the top bunks at Rushville are dangerous. But, as the court reminded Loy, he was permitted at screening to proceed on a claim for damages based on the non-issuance or delay in receiving a bottom bunk permit, not a broader claim about facility-wide conditions. And on appeal, Loy does not challenge the screening order.

AFFIRMED