

NONPRECEDENTIAL DISPOSITION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 November 2, 2023*

Decided November 3, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1351

BRIAN DOYLE,
Plaintiff-Appellant,

v.

STEPHEN RITZ and WEXFORD
HEALTH SOURCES, INC.,
Defendants-Appellees.

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

No. 19-cv-1210-NJR

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Brian Doyle, an Illinois prisoner, has wounds on his scalp that generate fluid and lead to chronic infections. To treat his condition, doctors provided Doyle with skin cleansers, antibiotics, and incisions to drain fluid, but not further treatment that his health might not tolerate. He has sued his prison's healthcare contractor (Wexford

* 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).

Health Sources, Inc.) and one of its administrators for violating his Eighth Amendment rights by not providing more treatment. The district court ruled against Doyle at summary judgment. Because no reasonable jury could find that the administrator or Wexford deliberately disregarded Doyle's medical needs, we affirm.

We construe the evidence in the light most favorable to Doyle. *See Stockton v. Milwaukee County*, 44 F.4th 605, 614 (7th Cir. 2022). For two decades Doyle has had fluid retention and infections in wounds on his scalp because of skin ailments. In 2016, Dr. Stephen Ritz, a Wexford administrator, met with Doyle's treating doctor (a process called collegial review) and approved the doctor's request that Doyle see a general surgeon about his wounds. Doyle saw that surgeon. She advised against a form of surgery (a resection of the back of Doyle's scalp) because she predicted difficulties getting a surgical incision to heal. She recommended that Doyle see a plastic surgeon, which he did. Dr. Ritz, however, denied two follow-up visits with that surgeon, preferring instead to see how Doyle responded to an approach that another outside doctor had recommended: using an antiseptic skin cleanser and an antibiotic.

Doyle continued with the treatment of skin cleanser and an antibiotic for at least nine months. Later, one wound on his scalp became infected. His physician recommended that a plastic surgeon excise it. On collegial review, though, Dr. Ritz declined that referral in favor of the previous recommendation from the outside doctor that Doyle continue to use the antiseptic skin cleanser and an antibiotic. A month later, during collegial review, Dr. Ritz noted that the cleanser treatment had worked: Doyle's scalp had no open areas. He recommended that Doyle continue with that treatment and be reevaluated if his wound reopened. It did reopen, and a doctor then performed an incision and drainage.

Dr. Ritz denied other treatment that Doyle wanted. During a follow-up visit a few days after the incision and drainage, a nurse practitioner saw that Doyle's blood pressure and blood-sugar levels were uncontrolled. Doyle, however, refused to take the medicine, including insulin, to address those conditions. (Instead, Doyle asked the nurse practitioner for a single cell on the belief that it would help prevent infections.) As a result, he was not a candidate for further surgery when Doyle's treating physician noted that a scalp wound had stopped draining fluid. Dr. Ritz denied that physician's referral to an outside specialist because he wanted to control Doyle's blood-sugar levels first. Two months later, Dr. Ritz saw that Doyle's condition had not improved, but because no abscess was present, he again had Doyle continue with his antibiotics and sought to have him control his elevated blood-sugar levels before any surgery.

A few months later, a Wexford administrator approved a surgical evaluation for Doyle. The surgeon concluded that a resection of the affected skin would, as the general surgeon had previously opined, be problematic because the surgical incision might not close. But the surgeon recommended, and Dr. Ritz approved, an incision and drainage of a scalp wound because of accumulated fluid. When the surgeon proceeded, the fluid had already drained naturally. A plastic surgeon whom Doyle saw a few months later also advised against surgery. This surgeon asked for an MRI, which Dr. Ritz approved. The MRI revealed no further fluid collection.

Nine months later, Doyle's wound became infected again, and Dr. Ritz approved referrals for further treatment. First, Dr. Ritz approved a referral to the plastic surgeon who had ordered the MRI. This surgeon referred Doyle to a different facility. There, a doctor referred him to a dermatologist, and Dr. Ritz approved that referral. The dermatologist prescribed a medicated wash and the same antibiotic Dr. Ritz originally had Doyle take. Another doctor concurred that a resection was not advisable and urged Doyle to follow the non-surgical treatment that the dermatologist had suggested. Almost one year later, a physician's assistant made a similar recommendation.

Doyle sued Dr. Ritz and Wexford under 42 U.S.C. § 1983 for deliberately disregarding his medical needs. In Doyle's view, Dr. Ritz wrongly rejected some of the recommendations from his doctor to see outside specialists and improperly rejected Doyle's request for a single cell. And Wexford, Doyle contended, had a policy forcing Dr. Ritz to make those decisions. The defendants moved for summary judgment, which the district court entered. It first ruled that a reasonable jury could not find against Dr. Ritz: He reasonably monitored Doyle's health and approved requests for outside referrals when warranted, and other doctors prescribed treatment similar to Dr. Ritz's plan of care. Second, it concluded that Doyle furnished no evidence showing that placing him in a single cell was medically necessary. Finally, it ruled that no evidence suggested that Wexford had a policy or practice of denying referrals or single-cell requests.

On appeal, Doyle mainly argues that Dr. Ritz violated his Eighth Amendment rights by denying some requests from his doctor that he see outside specialists who, Doyle contends, might have resolved fluid accumulation and infections in his scalp. But to stave off summary judgment on his Eighth Amendment claim, Doyle had to supply evidence that Dr. Ritz deliberately disregarded an excessive risk of harm from those conditions. See *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). This requires evidence suggesting that Dr. Ritz's decisions were "not actually based on a medical judgment." *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763 (7th Cir. 2021) (citation omitted).

For two reasons, we agree with the district court that Doyle failed to meet his burden. First, the uncontradicted evidence establishes that Dr. Ritz followed reasonable medical judgment. He approved a request from Doyle's doctor in 2016 that Doyle see a general surgeon; he reasonably accepted that surgeon's advice to avoid a resection because of the associated risks; he reasonably adopted an alternative treatment of skin cleansing and antibiotics (which an outside doctor recommended and initially worked); he reasonably delayed surgery when Doyle's blood pressure and diabetes were uncontrolled (partly because Doyle refused to take his medicine); and he reasonably approved a referral for an MRI as well as referrals to surgeons and a dermatologist when the fluid accumulation and infections persisted. Even then, doctors continued to advise against surgery and favored the scalp-washing and antibiotic plan that Dr. Ritz had adopted, further confirming the reasonableness of his approach. Finally, no evidence suggests that placing Doyle in a single-occupancy cell would solve Doyle's problems. This record thus lacks evidence that Dr. Ritz deliberately disregarded Doyle's serious medical needs.

Doyle's claim against Dr. Ritz fails for a second reason. He did not show that any delay in seeing specialists "exacerbated the injury or unnecessarily prolonged pain." *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 242 (7th Cir. 2021) (citation omitted). Rather, as just mentioned, the specialists warned about the complications that a resection would entail and therefore advised against it. Thus, a reasonable jury could not find that delays in seeing specialists made Doyle worse off.

Finally, Doyle's claim that Wexford had a policy or practice of ignoring medical recommendations or requests to be placed in single-occupancy cells likewise falls short. He did not point to evidence of such a policy in the district court, and he does not do so here.

AFFIRMED