NONPRECEDENTIAL DISPOSITION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 16, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1387

DANIEL CRONE,
Plaintiff-Appellant,

v.

BRUCE IPPEL, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:21-cv-00232-JMS-TAB

Jane Magnus-Stinson,
Judge.

O R D E R

Daniel Crone, a former Indiana prisoner, appeals summary judgment on his claims that prison physicians and Wexford of Indiana, LLC, the prison's private health care provider, were deliberately indifferent to his knee injury. We affirm the judgment.

* 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).

We present the facts in the light most favorable to Crone, the nonmoving party. See *Hackett v. City of South Bend*, 956 F.3d 504, 506 (7th Cir. 2020). While at New Castle Correctional Facility in October 2017, Crone injured his left knee after a fall in the shower. He complained of pain and swelling, and a nurse recommended acetaminophen (and later ibuprofen), heat, and ice after reviewing an x-ray that showed no fractures. About two months after the fall, Crone saw prison physician Dr. Bruce Ippel. Crone reported that his knee pain was similar to a previous shoulder injury that had healed after a cortisone shot. Dr. Ippel advised Crone to use an elastic bandage, cautioned him against additional falls, and prescribed him meloxicam, an anti-inflammatory pain medication. Crone returned to Dr. Ippel two months later, reporting his pain was worse, he had difficulty walking, and the meloxicam was ineffective. Dr. Ippel now gave Crone a cortisone shot, ordered a more substantial knee brace, and prescribed acetaminophen (a pain reliever but not an anti-inflammatory) and a home exercise plan. Dr. Ippel retired in 2019 and had no further involvement in treating Crone's injury.

Crone continued to suffer knee pain, and the prison designated him as needing chronic care. In September 2020, he reported worsening pain in both knees to another prison physician, who was dismissed from the case at screening. 28 U.S.C. § 1915A. (Crone does not contest that dismissal.) After evaluating Crone, the physician asked Wexford to consider referring Crone to physical therapy. Requests for offsite care were reviewed by Wexford's regional medical directors, who included director Dr. Michael Mitcheff (who is a defendant) and associate director Dr. Duan Pierce (who is not). Dr. Pierce reviewed and denied the request, recommending that Crone continue his home exercise plan instead. Dr. Mitcheff recalled no involvement in Crone's care.

About two months later, Crone had an appointment with another prison physician, Dr. Erick Falconer. Dr. Falconer assessed Crone's symptoms, later attesting that Crone "did not appear to have a significant abnormality that significantly impacted his normal activities." Crone informed Dr. Falconer that he had been performing home exercises for three years and that they had not helped alleviate his pain. But based on Dr. Pierce's recommendation, Dr. Falconer reviewed the plan again and identified specific exercises Crone could try to target his pain. Dr. Falconer also continued Crone's acetaminophen prescription and instructed him to return if his knee pain worsened. Crone did not submit any further health care request forms concerning his knee pain.

Crone next turned to federal court for relief. As relevant to this appeal, he alleged that Dr. Ippel, Dr. Falconer, Dr. Mitcheff, and Wexford were deliberately indifferent to

his knee injury. See 42 U.S.C. § 1983. He asserted that the doctors denied him necessary care by declining to refer him to physical therapy or to perform diagnostic testing (like an MRI) to assess his condition more accurately. He also alleged that Wexford had an unconstitutional policy of refusing to provide these sorts of treatments and tests to prisoners in order to reduce health care costs.

The district court entered summary judgment for the defendants. With respect to Dr. Ippel, the court concluded that Crone failed to present evidence from which a jury could find that he ignored Crone's needs, considering that he administered a cortisone shot and prescribed Crone various pain medications, a knee brace, and a home exercise plan to mitigate his pain. The court also ruled that no reasonable jury could conclude that Dr. Falconer was deliberately indifferent to Crone's condition, because Dr. Falconer was not the one responsible for denying the physical therapy request and his decision not to perform an MRI was a reasonable exercise of medical judgment. Additionally, the court determined that Dr. Mitcheff was entitled to summary judgment because there was no evidence that he was personally involved in Crone's medical care. As for Wexford, the court concluded that there was no evidence that the company had an unconstitutional policy, let alone one that was a moving force behind any constitutional violation. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978); *Shields v. Ill. Dep't of Corr.*, 746 F.3d 782, 789 (7th Cir. 2014) (applying *Monell* to private corporation).

On appeal, Crone first argues that a jury could infer that the doctors were deliberately indifferent because they persisted in his course of treatment (pain medication and home exercises) despite a lack of improvement in his knee pain. He maintains that the doctors were obligated to perform an MRI, or other diagnostic tests, when his symptoms did not improve. To avoid summary judgment, Crone needed to furnish evidence from which a reasonable jury could find that the physicians were aware of, and recklessly disregarded, a serious risk to his health. See *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014).

We agree with the district court that Crone did not produce the necessary evidence to allow an inference that any of the doctors were indifferent to his pain. The record shows that Dr. Ippel altered his approach in response to Crone's feedback, offering various painkillers and a cortisone shot, prescribing a home exercise plan, and ordering him a more substantial brace. These steps are inconsistent with an inference of deliberate indifference. See *Arce v. Wexford Health Sources, Inc.*, No. 22-1694, 2023 WL 4781490, at *6 (7th Cir. July 27, 2023). Further, while neither Dr. Ippel nor Dr. Falconer ordered Crone an MRI as he would have preferred, the decision to forego diagnostic

tests is a matter for medical judgment, and no evidence would allow a jury to find that the doctors "departed significantly from accepted professional norms" here. *Pyles*, 771 F.3d at 411. Crone maintains the doctors were acting blindly without these tests, but their own observations and the x-rays were sufficient for them to reasonably conclude that further testing was unnecessary. See *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013). Dr. Mitcheff was not involved with treating Crone's knee injury, and Crone does not argue otherwise on appeal, so summary judgment was appropriate for him, too. See *Minix v. Canarecci*, 597 F.3d 824, 833 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires 'personal involvement in the alleged constitutional deprivation.'").

Crone primarily challenges the district court's entry of summary judgment for Wexford. He argues that Wexford's systematic denial of treatments to prisoners is illustrated by the high volume of deliberate-indifference lawsuits against it, many of which were dismissed for failure to provide evidence of a widespread custom.

We agree with the district court that Crone failed to present a triable issue of fact whether Wexford maintained an official policy, practice, or custom that caused a constitutional violation that harmed Crone. *Monell,* 436 U.S. at 690–91; *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 664 (7th Cir. 2016). The mere fact that many prisoners (often unsuccessfully) bring lawsuits against Wexford, for various unrelated problems, does not suggest that constitutional violations were happening "with such frequency that it ignored an obvious risk of serious harm." *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 967 (7th Cir. 2019). Indeed, we have said that unrelated prisoners' own assessments of their care may not even be relevant to establishing a corporate policy. *Howell v. Wexford Health Sources, Inc.*, 987 F.3d 647, 658 (7th Cir. 2021) (upholding exclusion of prisoners' testimony about Wexford doctors denying physical therapy).

Recognizing the currently bare record, Crone maintains that he needed a trial to procure the evidence necessary to prove his *Monell* claim, because he was denied access to other prisoners' medical files and other records to help illustrate an unconstitutional policy. Because the defendants did not fully answer his interrogatories, he argues, cross-examining defense witnesses was the only means for him to prove his claim. He otherwise suggests that the *Monell* standard affords private companies like Wexford a loophole to provide substandard care by dividing responsibilities between members of their staff, so that none is individually aware of a risk of harm.

But Crone does not substantiate his assertion that he was incapable of obtaining any necessary evidence through the discovery process. Though he maintains that the defendants did not respond adequately to his interrogatories, he never moved to compel, nor engaged in other efforts to have the district court order production of any missing evidence prior to summary judgment. And although we have acknowledged criticism of our application of *Monell*'s standards to private companies like Wexford, see *Shields*, 746 F.3d at 795, we see nothing in the record that would permit a reasonable jury to find the company was deliberately indifferent to his pain, even if it were vicariously liable for all its employees' actions, and so there is no reason to revisit the question in the present case. See *Collins v. Al-Shami*, 851 F.3d 727, 734 (7th Cir. 2017).

Finally, Crone objects to the district court's denial of his motion for recruitment of counsel, arguing that he needed a lawyer to help him obtain the discovery he says he was lacking. But the court acted within its discretion denying Crone's request. See *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc). The court appropriately determined that Crone appeared competent to litigate his relatively straightforward claims on his own, based on his ability to read and write in English as demonstrated by his court filings, his education level (a G.E.D.), and his absence of physical disabilities or mental-health issues that would affect his ability to continue pro se. His claims failed not for lack of his own abilities, but because the evidence did not demonstrate deliberate indifference to his pain. See *Jackson v. Kotter*, 541 F.3d 688, 700 (7th Cir. 2008).

AFFIRMED