

NONPRECEDENTIAL DISPOSITION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 April 4, 2024*
Decided April 5, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

Nos. 22-2384 & 23-1682

ANTONIO SUSTAITA,
Plaintiff-Appellant,

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

v.

No. 19-cv-4150-MMM

ROSS FORD,
Defendant-Appellee.

Michael M. Mihm,
Judge.

ORDER

Antonio Sustaita, an Illinois prisoner, challenges the denial of his motion to reconsider the summary judgment entered against his claims that his constitutional rights were violated during a prison transfer. *See* 42 U.S.C. § 1983. The court determined

* We have agreed to decide the appeals 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).

that Sustaita alleged no exceptional circumstances to warrant post-judgment relief. We affirm.

We describe the following events in the light most favorable to Sustaita, the nonmoving party. *See Lockett v. Bonson*, 937 F.3d 1016, 1022 (7th Cir. 2019). On June 6, 2018, two correctional officers began transferring Sustaita from Hill Correctional Center to a different prison. Hill was on a level I lockdown, under which prisoners had to be handcuffed behind their backs unless a medical permit allowed otherwise. The officers at first agreed to handcuff Sustaita in front of his body because he had prior shoulder injuries. But they soon encountered corrections lieutenant Ross Ford, who—unaware of Sustaita’s shoulder injuries—insisted that his handcuffs be refastened behind his back. Ford tried re-cuffing Sustaita, but Sustaita experienced shoulder pain, so Ford linked together two sets of handcuffs behind Sustaita’s back to ease the discomfort. Sustaita requested to visit the healthcare unit for his pain, but Ford refused.

After the transfer, Sustaita was examined at his new prison’s healthcare unit, where the staff did not note any injury. He visited the healthcare unit twice more over the next week, and his medical records show that no injury was reported.

Sustaita brought this lawsuit in July 2019. The district court screened his operative complaint, *see* 28 U.S.C. § 1915A, allowing him to proceed on claims against Ford for excessive force, deliberate indifference to a serious medical need, and assault and battery.

Ford moved for summary judgment on May 31, 2022. He argued that Sustaita could not provide sufficient evidence to support his constitutional claims and that Sustaita’s state claims were barred by sovereign immunity. That same day, the clerk issued a “notice of summary judgment” to Sustaita and advised him that he had 21 days to respond to Ford’s motion.

Thirty-six days later, Sustaita had not responded to the motion or requested an extension, and the court entered summary judgment for Ford. The court explained that it had accepted Ford’s proposed statement of facts as undisputed because Sustaita failed to respond to the motion in accordance with local rules. *See* C.D. Ill. R. 7.1(D). And the court agreed with Ford that a reasonable jury could not find that he violated Sustaita’s constitutional rights. The court explained that the excessive force claim failed because Ford enforced the security procedures in good faith, and there was no evidence that Ford knew about Sustaita’s shoulder injury or that Sustaita had a permit to allow handcuffs in front of his body. As to the deliberate indifference claim, the court

determined there was no evidence that Ford caused a new injury or exacerbated Sustaita's prior shoulder injury, and so Ford was not deliberately indifferent when he refused to take Sustaita to the healthcare unit before his transfer. Because it was dismissing the constitutional claims, the court declined to exercise jurisdiction over Sustaita's state law claims. The court entered judgment the following day, on July 7, 2022.

On July 8, Sustaita filed an untimely motion to extend the time to respond to Ford's summary judgment motion. Sustaita urged that Ford would not be prejudiced by an extension, adding that he had been unable to access the law library or his case materials because of a COVID-19 diagnosis and restrictions related to prison lockdowns.

The court denied this motion. First, the court concluded that Sustaita failed to demonstrate excusable neglect for the untimely motion. *See* FED. R. CIV. P. 6(b)(1)(B). Even if his movements or access to legal materials were restricted, the court stated, Sustaita did not explain why he could not request an extension. Second, the court found that the extraordinary remedy of relief under Rule 59(e) was not warranted because Sustaita did not address the merits of the summary judgment order.

Sustaita filed a motion to reconsider, insisting that his motion for an extension was timely. He stated that he did not receive the notice of summary judgment until June 15 and promptly mailed his extension request on July 2—within the requisite 21 days—but the clerk did not docket his motion until after the July 5 deadline had passed.

The court also denied this motion. Construing the motion under Rule 60(b), the court determined that Sustaita failed to provide new evidence or demonstrate exceptional circumstances to warrant relief from judgment.

On appeal, Sustaita challenges the court's denial of his motion to reconsider, reiterating that he timely filed his motion for an extension because he placed it in the prison mail within 21 days of receiving the motion for summary judgment. But the district court rightly determined that his motion was untimely because the local rules required him to respond "[w]ithin 21 days after service of a motion for summary judgment," C.D. Ill. R. 7.1(D)(2), and service of the motion was complete upon Ford mailing it on May 31, FED. R. CIV. P. 5(b)(2)(C), regardless of when Sustaita received it.

Sustaita next argues that even if his motion were untimely, the district court wrongly determined that he had not shown excusable neglect based on his COVID-19 illness, the prison lockdowns, and his lack of access to legal materials. But the court appropriately denied the motion after considering the relevant circumstances surrounding the neglect. *See Bowman v. Korte*, 962 F.3d 995, 998 (7th Cir. 2020). As the court rightly noted, Sustaita filed his response late (18 days after the deadline), and he did not allege any extraordinary circumstances to explain why his COVID-19 diagnosis or restricted movements prevented him from timely requesting an extension.

Sustaita also argues that the district court was biased against him because the court denied his extension request without regard for his COVID-19 illness and despite having previously granted Ford's extension requests. But the court's adverse ruling alone is insufficient to prove bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

We have considered Sustaita's remaining arguments, and none has merit.

Finally, we note that the court, in its summary judgment order, relinquished jurisdiction over Sustaita's state law claims, but the judgment states that all claims against Ford were dismissed with prejudice. We modify the judgment to reflect that, with respect to any claims under state law, the dismissal is without prejudice.

AFFIRMED AS MODIFIED