NONPRECEDENTIAL DISPOSITION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 13, 2024*
Decided March 14, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1785

ANTHONY ASHFORD,
Plaintiff-Appellant,

v.

HUGHES LOCHARD and
DAVID MARCOWITZ,
Defendants-Appellees.

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

No. 20-CV-4240

Sue E. Myerscough,
Judge.

O R D E R

Anthony Ashford, a civil detainee at the Rushville Treatment and Detention Facility in Illinois, appeals the decision granting the defendants' motion for summary judgment in his suit alleging constitutional violations arising from his medical treatment. We affirm.

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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).

Ashford injured his nose on December 2, 2017, while playing basketball. The next day, he reported pain, and a nurse evaluated him and gave him acetaminophen for pain. Three days later, a physician assistant determined that Ashford's nose was fractured and performed a closed nasal reduction, a procedure in which the nasal bones are realigned without surgery. The physician assistant noted that, although Ashford reported improved airflow, his nose was still slightly deviated (which is not unusual regardless of injury, according to the doctor that treated Ashford).

Two days later, Ashford again complained of nose pain, so medical staff gave him more acetaminophen and x-rayed his nose. According to the radiologist, the x-ray showed a "minimally depressed fracture of the tip of the nasal bones" and no other abnormalities. When Ashford's pain persisted, the physician assistant provided him with acetaminophen and again evaluated him. The physician assistant determined that Ashford's airways were patent (open) and mentioned a possible referral to an ear, nose, and throat (ENT) specialist for surgery "if [the] nose is not patent or displacement is not cosmetically acceptable." On December 20, 2017, the collegial review team determined that Ashford would be monitored onsite. The next month, Dr. David Marcowitz ordered a second x-ray, which showed that the fracture was "stable."

In September 2018, after Ashford asked why he had not seen a specialist or been scheduled for surgery, medical staff scheduled a consultation with Dr. Marcowitz, who ordered a third nasal x-ray. The radiologist's report showed that the fracture was "healed" and there was "[n]o improvement" since the second x-ray. Handwritten notes analyzing the x-ray reported that the nasal passages were "patent." A follow up x-ray in April 2019 showed "an old healed fracture" that was "[s]table."

In November 2020, Ashford sued Dr. Marcowitz and another doctor at Rushville, Dr. Hughes Lochard, under 42 U.S.C. § 1983. He asserted that they treated his nasal fracture in an objectively unreasonable manner, in violation of the Fourteenth Amendment, when they did not refer him to a specialist for evaluation and a surgical consultation. After discovery, the doctors moved for summary judgment, arguing that Ashford's suit was untimely because Ashford broke his nose in December 2017 and, regardless, Dr. Lochard had left the facility in November 2017. Second, they argued that he lacked sufficient evidence to raise a genuine dispute of material fact about whether their responses to his injury were objectively unreasonable. The doctors submitted affidavits in which they each attested that closed nasal reductions are recommended for most fractures and that, because of the risks, surgery is not recommended unless the fracture obstructs the airways or causes frequent infections. In response, Ashford

argued that the defendant doctors were not ENT specialists and failed to properly interpret his x-rays, and further that Dr. Lochard must have been at the prison after November 2017 because various medical records referred to him.

The district court granted the doctors' motion for summary judgment. The court determined that there was no dispute about whether Ashford's treatment was consistent with customary medical practice for his type of fracture: The physician assistant performed the recommended closed nasal reduction just days after Ashford fractured his nose, and the healing of the fracture was monitored through regular x-rays thereafter. When, months later, Ashford complained that his nose was not healed and he required surgery, doctors promptly ordered another x-ray to ensure that it was healed. Last, Ashford failed to produce any evidence that it was objectively unreasonable to monitor him onsite rather than refer him to an outside specialist.

Ashford appeals, and we first consider whether the action was barred by the statute of limitations, which is two years for § 1983 claims brought in Illinois. *See Ray v. Maher*, 662 F.3d 770, 772–73 (7th Cir. 2011). Accrual is governed by federal law. *See Wilson v. Wexford Health Sources, Inc.*, 932 F.3d 513, 517 (7th Cir. 2019). For claims based on medical care, the wrong continues "for as long as the defendants had the power to do something about [the plaintiff's] condition." *Id.* at 517–18. (alteration in original). Thus, a defendant's involvement in the alleged wrong ends when he leaves the institution. *Id.* at 518. Here, Dr. Lochard left Rushville in November 2017, so the November 2020 complaint is untimely with respect to his alleged wrongdoing. But because Ashford's course of treatment continued until at least April 2019, his claim against Dr. Marcowitz is timely.

With respect to that claim, Ashford argues on appeal that, the district court could not determine at summary judgment that he received appropriate care because he never saw a specialist. Because Ashford is a civil detainee, his medical-care claim is reviewed under the Fourteenth Amendment objective unreasonableness standard. *See Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015); *Hardeman v. Curran*, 933 F.3d 816, 823 (7th Cir. 2019) (extending objectively unreasonable standard to all civil detainee claims about conditions of confinement, including medical care). This standard exceeds negligence and even gross negligence: we consider "whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly" with respect to the consequences of their treatment decisions. *McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018).

Based on the record here, no reasonable jury could find that Dr. Marcowitz's chosen course of treatment was objectively unreasonable. The only medical evidence—

the doctors' affidavits—shows that the treatment Ashford received was consistent with customary medical practice. Ashford points to the physician assistant's statements that he could be referred to an ENT specialist as evidence that Dr. Marcowitz's treatment was unreasonable. But the physician assistant said that referral would be appropriate "if [the] nose is not patent or displacement is not cosmetically acceptable." Ashford did not submit evidence that either of those qualifications applied to him, and record evidence establishes that the nasal airways were patent. Regardless, the exercise of medical discretion to deny Ashford's referral to a specialist was not unreasonable. The question of a referral was submitted to a collegial review panel and rejected because Ashford had received the appropriate treatment. Disagreements between Ashford and the panel—or even between the physician's assistant and the panel—regarding the proper course of treatment does not show that the chosen treatment was objectively unreasonable. *See Williams v. Ortiz*, 937 F.3d 936, 944 (7th Cir. 2019).

Nor does it matter that Dr. Marcowitz is not an ENT specialist. Courts "impose no requirement that an expert be a specialist in a given field" to offer evidence. *Hall v. Flannery*, 840 F.3d 922, 929 (7th Cir. 2016). Ashford did not support his assertions that Dr. Marcowitz was unqualified to care for a nasal fracture, nor produce any evidence casting doubt on the doctors' testimony about the customary treatment for nasal fractures. Ashford's own conclusory statements cannot defeat a motion for summary judgment. *Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 956 (7th Cir. 2021).

Last, Ashford insists that Dr. Marcowitz must not have read his x-ray correctly because he, as a layperson, can see a bone fragment in one of the images of his nose. But because Ashford develops this argument for the first time in his reply brief, he has waived it. *Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023). In any event, Ashford's lay interpretation of medical evidence does not place the doctor's interpretations in dispute, and Ashford still cannot point to any evidence that the presence of a bone fragment would require deviation from standard course of practice when the airways—like Ashford's—are unobstructed.

AFFIRMED