

NONPRECEDENTIAL DISPOSITION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 25, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2222

JAMES D. GREEN,
Plaintiff-Appellant,

v.

CHERYL JEANPIERRE,
Defendant-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 21-cv-1323

Stephen C. Dries,
Magistrate Judge.

ORDER

James Green, a Wisconsin prisoner, appeals summary judgment on claims under the Eighth Amendment that Cheryl Jeanpierre, a physician at Waupun Correctional Institution, was deliberately indifferent to pain from Green's ulnar neuropathy. Because on this record no reasonable jury could find that Dr. Jeanpierre was deliberately

* 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).

indifferent to Green's medical needs in violation of the Eighth Amendment, we affirm the judgment.

We construe the record in favor of Green, the party opposing summary judgment. *See Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 678 (7th Cir. 2023). While incarcerated at Waupun, Green was diagnosed in 2018 with ulnar neuropathy, which is damage to the ulnar nerve in his right hand. His neuropathy caused numbness, tingling, and pain in his hand and fingers. A doctor prescribed various pain treatments, but they were ineffective. Eventually, in 2019, that doctor prescribed gabapentin, an anti-convulsive drug that sometimes can treat nerve pain. Because prisoners can abuse or sell this drug, the Wisconsin Department of Corrections requires that its doctors seek approval from a medical director before prescribing it. The criteria for approval include the failure of other treatments, objective evidence of neuropathy, and no history of medication diversion. Green met the criteria and was approved for gabapentin after he affirmed in writing that he would take the drug only as prescribed and that his prescription could be adjusted or terminated if he failed to do so. A year later, his doctor renewed Green's prescription and ordered bloodwork to check whether he was complying with his anti-diversion agreement. Green's blood levels were within the range expected for one taking his prescribed dosage of gabapentin.

A few months later, Green's treatment changed. During the time that he was receiving his prescribed dosage of gabapentin, his bloodwork revealed that he no longer had detectable levels of the drug, suggesting that, contrary to his pledge, he was not taking it as prescribed. As a result, his prescription was discontinued. The health unit told Green that he could seek a different pain-management option.

Dr. Jeanpierre started treating Green in late 2020. Green tried the other medications that Dr. Jeanpierre (or a nurse) prescribed, including an anti-depressant (duloxetine) and pain-relievers (acetaminophen and naproxen). In an effort to receive gabapentin, which he preferred, he asserted that his previous diversion of that drug was caused by other prisoners who had extorted the drug from him. Dr. Jeanpierre asked to renew his gabapentin prescription, but an assistant medical director denied the request, citing Green's history of diversion.

Over the next year, Green complained about pain caused by his condition. Dr. Jeanpierre responded by renewing his prescriptions for acetaminophen and naproxen. Green insisted that these drugs did not help, and when he added that they were also causing stomach pain, Dr. Jeanpierre switched to prescribing nortriptyline, another anti-depressant. Green refused to take that drug. He demanded that a nurse renew his

gabapentin prescription and, when she did not, he refused to take any prescribed medications for his pain. He continued to complain about pain, and a few months later a nurse prescribed an anti-convulsant alternative to gabapentin to treat it. But, as happened with gabapentin, his bloodwork soon showed that Green did not have detectable levels of this new drug and thus had not taken it as prescribed. Dr. Jeanpierre stopped treating Green a couple months later, when she resigned in August 2022.

In suing Dr. Jeanpierre, Green alleged that she was deliberately indifferent to his serious chronic pain in violation of his Eighth Amendment rights. *See* 42 U.S.C. § 1983. During discovery, Green unsuccessfully asked the court to recruit counsel. Later, a magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c), entered summary judgment for Dr. Jeanpierre. The judge acknowledged that Green's pain was undisputedly and objectively serious, but Green presented no evidence from which a jury could find that Dr. Jeanpierre deliberately ignored it.

On appeal, Green first challenges the entry of summary judgment, a decision that we review *de novo*. *See Arce*, 75 F.4th at 678. He argues a jury could find that Dr. Jeanpierre exhibited deliberate indifference to Green's chronic pain by failing to adjust treatment after learning that the medications she prescribed were ineffective.

Under the Eighth Amendment, Dr. Jeanpierre was entitled to summary judgment unless Green furnished evidence that she knew about and yet remained deliberately indifferent to a serious medical condition. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *White v. Woods*, 48 F.4th 853, 862 (7th Cir. 2022). This standard "mirrors the recklessness standard of the criminal law." *Brown v. LaVoie*, 90 F.4th 1206, 1212 (7th Cir. 2024).

The district court rightly entered summary judgment because no rational jury could find that Dr. Jeanpierre was deliberately indifferent to Green's pain. When she first began to treat him, she reasonably tried alternatives to gabapentin, which a director had disqualified Green from taking because he had diverted it. When he complained to her that these alternatives were ineffective and asserted that prisoners had extorted gabapentin from him, she responded attentively by asking that the director renew Green's gabapentin prescription. After her request was denied, she continued with the alternative regimen, responsively changing it after Green complained that it upset his stomach. Although she knew that this change did not render Green "pain-free," that fact alone does not reflect deliberate indifference, *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996), given that Green refused to take his prescribed anti-inflammatories and anti-depressant, and he failed to take as prescribed the anti-convulsive alternative to

gabapentin. We recognize that Green preferred gabapentin. But we have routinely rejected medical-indifference claims, such as Green's, that "[are] based on a preference for one medication over another" without "evidence of a substantial departure from acceptable professional judgment." See *Lockett v. Bonson*, 937 F.3d 1016, 1024 (7th Cir. 2019). Green furnished no such evidence here.

Finally Green argues that the district court wrongly denied his motion to recruit counsel, but we disagree. The district court had to assess whether the complexity of the case exceeded Green's competence, and we review that assessment for abuse of discretion. See *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc). Green maintains that he needed counsel because his potentially meritorious case involved resolving complex issues and making credibility judgments. But for several reasons the district court reasonably found that Green could adequately litigate this suit. First, he wrote a coherent brief that demonstrated his ability to communicate the facts of his case. Second, the case turned on the straightforward question whether Dr. Jeanpierre refused to try pain-relieving alternatives to the unavailable gabapentin. Last, the undisputed written medical record, which recorded Dr. Jeanpierre's use of treatment alternatives, did not require credibility judgments. We thus have no reason to disturb the ruling.

AFFIRMED