[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-11542

ESTATE OF GLEN MITCHELL HAND,
by and through Phyllis A. Hand personal representative,

Plaintiff - Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
CENTURION OF FLORIDA,
MHM HEALTH PROFESSIONALS INC.,
DAVID E. RODRIGUEZ,
MD,
a.k.a. David Rodriguez,
JEAN MAX SAINT CHARLES,
MD, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-66-AW-HTC

Before WILLIAM PRYOR, Chief Judge, LUCK, Circuit Judge, and MOORER,* District Judge.

PER CURIAM:

We find the district court erred in denying the motion to amend with regard to the federal claims against Defendant Dr. Juan Santiago, but was correct in denying the request to amend as to Defendant Centurion of Florida LLC. Therefore, the opinion of the district court is affirmed in part and reversed in part.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

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* The Honorable Terry F. Moorer, United States District Judge for the Southern District of Alabama, sitting by designation.

[1] When this Court reviews a dismissal of a complaint, the facts set forth in the plaintiff's complaint "are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto." *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000).

Glenn Mitchell Hand ("Hand") was a prisoner of the Florida Department of Corrections ("FDOC"). At all times relevant to this lawsuit, Centurion of Florida LLC ("Centurion") was the health care company contracted with FDOC to provide medical care and treatment to prison inmates. MHM Health Professionals, Inc. ("MHM") also contracted with FDOC, Centurion, Dr. David E. Rodriguez-Rivera ("Dr. Rodriguez-Rivera"), Dr. Jean Max Saint Charles ("Dr. Saint Charles"), Dr. Juan Santiago ("Dr. Santiago"), Dr. Peter Fabian Edemekong ("Dr. Edemekong"), and Drianna Nishell Law ("Law") to provide medical care and treatment to prison inmates. In sum, Plaintiff alleges that either FDOC, Centurion, and/or MHM employed or otherwise contracted with nurses, nursing assistants, nurse practitioners, physicians, and correction officers who care for and supervised Hand.

On December 6, 2016, Hand was admitted to Reception Medical Center ("RMC") to treat throat cancer through chemotherapy and radiation. Approximately five months later, doctors at RMC determined Hand was now cancer-free and found no evidence of recurrence. On April 13, 2017, Dr. Saint Charles discharged Hand from the inpatient hospital and ordered he be returned to general population. Dr. Saint Charles ordered a follow up with an ENT, plastic surgeon, and oncologist in three months, along with a follow-up with a primary-care physician in one week. The discharge plan did not include information on a plan for infection risk or control, physical therapy, nursing, or deep vein thrombosis prevention. It also did not include any discussion of Hand's

ability to ambulate, care for himself, or maintain daily activities. On April 19, 2017, Hand followed up with his primary care doctor and presented normal vital signs and no complaints other than a need for dentures.

As advised, on May 3, 2017, Hand followed up for a skin lesion on his left ear, and after review of Hand's medical history and examining the lesion, the plastic surgeon determined it needed to be surgically removed. However, the surgeon had to submit a request for approval to perform the surgery, which he did the same day. Hand otherwise presented with normal vital signs and no complaints.

On Friday, May 5, 2017, Hand reported to Law, who is an advanced registered nurse practitioner ("ARNP"). Hand complained of nausea, vomiting, and diarrhea for the past 15 hours. He also complained of a frontal lobe headache, and his vitals were charted as blood pressure 105/80, pulse 114, oxygenation 95%, and temperature 98.4 degrees Fahrenheit. Law noted some past medical history but failed to include his COPD or pneumonia. Law also noted ongoing chemotherapy (despite the fact the treatment was concluded) and the presence of a peripherally inserted central catheter ("PICC line") without a dressing but did not describe it further other than it "fell out." Law assessed Hand as having gastroenteritis but did not address the headache or source of potential infection. She prescribed a treatment plan to include Zofran and ibuprofen, which is generally contraindicated in a patient with stomach problems. Hand was discharged to the general compound.

Law also did not write any orders until the following Monday, May 8, 2017.

On Monday, May 8, 2017, Hand was seen by Nurse K. Ginn ("Nurse Ginn"), who completed an "Abdominal Pain Protocol" and "Vomiting Diarrhea Protocol." She also documented that Hand stated he was experiencing crampy pain along with green, watery, and acidic smelling stools. Nurse Ginn further noted that Hand experienced hypoactive bowel sounds in all four quadrants and that his vitals were listed as blood pressure 132/79, pulse 102, respirations 16, oxygenation 96%, and temperature 98.4 degrees. Hand was unable to stand for Nurse Ginn to take his blood pressure, and she charted skin tenting and dry mouth, but no treatment for dehydration. According to the "Abdominal Pain Protocol" and the "Vomiting Diarrhea Protocol," Hand's complaints should have been immediately relayed to a clinician. Hand was discharged back to the compound without any further treatment plan beyond continued Zofran and Ibuprofen. Nursing staff notes state Dr. Edemekong was notified, but they do not document what time. Further, no physician ever reviewed the chart or provided a follow-up care plan.

From May 8, 2017 through May 11, 2017, Hand further deteriorated such that he was unresponsive, unable to leave his bunk, or request help. On Thursday, May 11, 2017 at approximately 9:26 p.m., Hand was admitted to the RMC inpatient facility by Dr. Rodriguez-Rivera. Hand arrived via wheelchair with an IV placed in his wrist. Hand's admitting vitals were blood pressure 109/70,

pulse 100, respirations 17, and temperature 99.3 degrees. Hand also disclosed he had been unable to eat for the last two days. Hand was also unable to legibly sign his name, and his signature was also markedly different than his prior signatures in the past week. At 11:45 p.m., Dr. Rodriguez-Rivera was notified that Hand's temperature had reached 101.9 degrees. Dr. Rodriguez-Rivera ordered that Tylenol be administered as well as anti-nausea medication. However, he ran no additional tests on that date, and Hand was only seen once by a physician.

On Friday, May 12, 2017 at 5:30 a.m., Hand's blood was collected for a complete blood count ("CBC") panel. Within the next 2.5 hours, the nursing staff noted on two separate occasions that Hand's medical condition worsened, that he remained incontinent of the bowels, and that he was too weak to get out of bed. At 8:47 a.m., Dr. Saint Charles examined Hand and diagnosed him with dehydration and possible gastroenteritis. Despite Hand's worsening condition, Dr. Saint Charles continued with the prior course of treatment. At approximately 3:38 p.m., Hand's CBC panel results were available for review, and they indicated an elevated white blood cell count, elevated polys, and reduced lymphs which indicated infection. No physician or ARNP reviewed the results until Monday, May 15, 2017.

During the three days, Hand's condition significantly worsened, but there was no change to his treatment plan. Hand remained incontinent for both his bladder and bowels, and his temperature increased to 103 degrees. Additionally, nursing staff noted

Hand needed assistance with all activities of daily living. Dr. Santiago, without reviewing the blood test results, ordered that the same treatment protocol be continued. Though a PICC line had been attempted, it was not properly placed, and no antibiotics were administered. On Saturday, May 13, 2017, Hand was only seen once by a physician who made no changes to the treatment plan.

On Sunday, May 14, 2017, the nursing staff noted that Hand's speech was slurred and that he remained incontinent in both bowels and bladder. Dr. Santiago made a progress note at 1:40 p.m. to follow the current treatment plan but wrote no additional orders and failed to review the blood results.

On Monday, May 15, 2017, the nursing staff noted that Hand was now disoriented, his speech remained slurred, he remained incontinent, he had diminished breath sounds which required additional oxygen, and he had developed a wound on his right hip. At 9:00 a.m., Hand's worsening condition was relayed to Dr. Santiago. At 10:30 a.m., Dr. Santiago noted that he reviewed Hand's blood results from Friday but did not discuss the abnormalities or change the treatment plan except to treat the newly developed sore on his hip. Dr. Edemekong also included a handwritten note to file Hand's blood results and follow up with Law on Tuesday. A new PICC line was established, but no change to Hand's treatment protocol.

On Tuesday, May 16, 2017 at 8:30 a.m., nursing staff reported that Hand was disoriented and unresponsive. His vital signs worsened to 56% oxygenation, blood pressure 130/81, pulse 120,

35 respirations, and temperature at 100 degrees. Hand also had an abnormal heart rate and bilateral calf redness, tenderness, and swelling. Hand was placed on a ventilator; the code team was called; and he was sent by EMS to UF Health Shands Hospital ("Shands") in Gainesville, Florida with a stroke alert and seizure-like activity.

From May 17, 2017 to May 31, 2017, Hand underwent several diagnostic and laboratory tests at Shands which indicated he was suffering from the bacterial infection pseudomonas and that his heart, brain, liver, and other vital organs had been seeded with septic emboli. Hand was also in respiratory failure and required intubation. Hand was ultimately diagnosed with large middle cerebral artery infarct on the left side with multiple bilateral infarcts, endocarditis with mitral valve vegetation, pseudomonas, bacterial meningitis, and sepsis with multiple organ dysfunction. The physicians determined that the PICC line was the source of the infection.

On May 31, 2017, in consultation with the medical team at Shands, Hand's family decided on the withdrawal of care given his poor prognosis, so he was extubated and transferred back to RMC for comfort care only. On June 1, 2017, Hand was pronounced dead at 1:35 a.m. by Dr. Rodriguez-Rivera who determined the cause of death was sepsis and respiratory failure.

The Estate of Hand ("the Estate") filed suit on May 29, 2019 in Florida state court. After completion of the medical malpractice pre-suit period, the Estate filed an amended complaint and served

Defendants FDOC, Centurion, MHM, Dr. Francis D. Ong ("Dr. Ong"), Dr. Rodriguez-Rivera, Dr. Saint Charles, Dr. Santiago, Dr. Edemekong, and Law. The Estate brought claims pursuant to 42 U.S.C. § 1983 for violations of the Eighth Amendment – specifically deliberate indifference and failure to treat claims. The Estate also brought state law medical negligence claims.

Defendants timely removed the action to federal court, and several defendants filed their initial motions to dismiss. The Estate voluntarily dismissed the claims against Dr. Ong and opposed the motions to dismiss with respect to the other defendants. On July 14, 2020, the district court granted the motions to dismiss as to the federal law claims and dismissed them without prejudice while denying the motions to dismiss as to the state law claims. The court noted it found it unlikely that the Estate could plead a § 1983 against the individual defendants, but allowed an amendment.

As a result, the Estate filed the Second Amended Complaint on July 28, 2020. Defendants FDOC and MHM filed their answers and the remaining defendants filed their motions to dismiss. On January 13, 2021, the district court issued its order granting the motions to dismiss as to the § 1983 claims, so only the state-law claims remained.

On February 10, 2021, the Estate filed a motion to amend and/or motion for reconsideration and attached the proposed Third Amended Complaint, which incorporated additional details from the depositions of the doctors. Of note, the Estate indicated it intended to amend and assert § 1983 claims against only

Centurion and Dr. Santiago and voluntarily dismissed all claims against Dr. Edemekong.

The district court denied the motion to amend and confirmed the dismissal of the federal claims was with prejudice. On April 28, 2021, the district court entered an order remanding the remaining state law claims and entered final judgment on the § 1983 claims. The Estate filed its appeal on May 5, 2021.

The Estate appeals the district court's denial of the motion to permit it to file the Third Amended Complaint and dismissal of the § 1983 claims against Centurion and Dr. Santiago.

II. STANDARD OF REVIEW

"[This Court] reviews *de novo* the district court's grant of a motion to dismiss under [Federal Rule of Civil Procedure] 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Griffin v. Coca-Cola Refreshments USA, Inc.*, 989 F.3d 923, 931 (11th Cir. 2021) (citation and internal quotation marks omitted).

"Generally, we review the denial of a motion for leave to amend a complaint for abuse of discretion. But where the lower court denies leave to amend based on futility of the proposed amendment, we review that decision *de novo* because it is a conclusion that as a matter of law an amended complaint would necessarily fail." *SE Prop. Holdings, LLC v. Gaddy*, 977 F.3d 1051, 1056 (11th Cir. 2020) (citation and modifications omitted).

III. DISCUSSION AND ANALYSIS

Our analysis proceeds in three stages. First, we explain that the Estate has abandoned any challenge to district court's dismissal of claims against defendants other than Centurion and Dr. Santiago. Second, we explain that the district court correctly found the motion to amend futile with respect to Centurion. And third, we explain that the motion to amend the complaint was not futile with respect to Dr. Santiago and that the district court's alternate ground for denying leave to amend was erroneous.

A. Abandonment of Claims Against Other Defendants

"We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (citations omitted). Moreover, "a party seeking to raise a claim or issue on appeal must plainly and prominently so indicate, i.e., in a section of his brief that is demarcated by a boldface heading or by some equivalent notation. At the very least, he must devote a discrete, substantial portion of his argumentation to that issue. Otherwise, the issue . . . will be considered abandoned." *United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003), *abrogated on other grounds by Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019).

In the case at hand, in its initial brief, the Estate identified issues that solely pertain to the denial of the motion to amend and

did not directly appeal the dismissal of the second amended complaint. Further, the discussion is limited to § 1983 claims against Dr. Santiago and Centurion. Therefore, as there is no argument as to the § 1983 claims against Dr. Rodriguez-Rivera, Dr. Saint Charles, and Law, those remain dismissed and any appellate issues related to them are deemed waived. *See, e.g., Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) ("Although Greenbriar refers to the district court's dismissal of its amendment in its Statement of the Case in its initial brief, it elaborates no arguments on the merits as to this issue in its initial or reply brief. Accordingly, the issue is deemed waived.").

As to Centurion and Dr. Santiago, the appeal is limited to the request to amend, as the Estate did not actually appeal the dismissal of the Second Amended Complaint. However, in making that determination, the Court still looks to the claims made in both the Second Amended Complaint and the proposed Third Amended Complaint to determine whether the district court correctly determined futility and the failure to cure.

B. Motion to Amend

The district court denied the motion to amend because the proposed Third Amended Complaint would not cure the pleading deficiencies earlier identified by the district court's orders. The district court also stated that it denied leave to amend because the plaintiff already had the opportunity to cure and had not done so.

In expanding upon its analysis, the district court stated that in the Second Amended Complaint, the Estate presented § 1983 deliberate-indifference claims against Centurion and the individual doctors that the district court dismissed because the Estate had not alleged enough to show a constitutional violation. In the proposed Third Amended Complaint, the district court determined that the claims still did not have sufficient factual allegations to allege a federal deliberate indifference claim against Dr. Santiago. As to Centurion, the district court found that the factual allegations pertaining to understaffing on nights and weekends and procedures that made it difficult to obtain timely lab results were insufficient to state a § 1983 claim because the Estate did not sufficiently allege that these shortcomings caused Hand's injuries.

Federal Rule of Civil Procedure 15 provides "[t]he court should freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15(a)(2); *see also Spanish Broad. Sys.of Fla., Inc. v. Clear Channel Commc'ns, Inc.*, 376 F.3d 1065, 1077 (11th Cir. 2004) ("[L]eave to amend must be granted absent a specific, significant reason for denial. . . .").

> In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be freely given.

McKinley v. Kaplan, 177 F.3d 1253, 1258 (11th Cir. 1999) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Put another way, we have set forth five factors for district courts to consider: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1241 (11th Cir. 2009).

The district court found that the amendment would be futile and that plaintiff had repeatedly failed to cure deficiencies by amendments previously allowed. We will address each in turn and start with futility because that issue consumed the bulk of the analysis in the denial of the motion to amend.

"[D]enial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal." *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) (internal quotation marks and citations omitted); *see also St. Charles Foods, Inc. v. America's Favorite Chicken Co.*, 198 F.3d 815, 822-23 (11th Cir. 1999) (citations omitted) ("When a district court denies the plaintiff leave to amend a complaint due to futility, the court is making the legal conclusion that the complaint, as amended, would necessarily fail."); *Fla. Power & Light Co. v. Allis Chalmers Corp.*, 85 F.3d 1514, 1520 (11th Cir. 1996) (stating amendment is futile if cause of action asserted therein could not withstand motion to dismiss). Therefore, we look to and apply the standard for a motion to

dismiss.Federal Rule of Civil Procedure 8(a)(2) requires "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Although Rule 8 does not require detailed factual allegations, it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). To survive a motion to dismiss, a complaint must state on its face a plausible claim for relief, and "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

i. Claims against Centurion

We first look at the denial of the motion to amend as it pertains to Centurion, as that matter is simple. The district court correctly noted that the Estate did not allege facts to show Hand's treating physicians considered costs when making medical decisions about his care. The Estate spends little time in its brief on its claims against Centurion. It argues that Centurion took over from its predecessor Corizon and made no changes when it adopted and reenforced the policies and procedures previously determined to be inadequate by the State of Florida, retained the same staff, and "continued with business as usual."

To the extent liability is conditioned on the actions of the healthcare providers, Centurion cannot be held liable under a theory of *respondeat superior* or vicarious liability alone. *See Hartley ex rel. Hartley v. Parnell*, 193 F.3d 1263, 1269 (11th Cir. 1999). As a private entity, Centurion may only under certain circumstances be held liable under § 1983. *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1276-77 (11th Cir. 2003). The Estate must establish that Centurion caused the violation of Hand's constitutional rights. *See Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658, 694 (1978). In sum, § 1983 liability against Centurion must be conditioned on the existence of an official policy or custom that constitutes deliberate indifference. *See Buckner v. Toro*, 116 F.3d 450, 453 (11th Cir. 1997) ("[T]he *Monell* policy or custom requirement applies in suits against private entities performing functions traditionally within the exclusive prerogative of the state, such as the provision of medical care to inmates."). To establish liability, "a plaintiff must show: (1) that his constitutional rights were violated; (2) that the [entity] had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

For the purpose of determining whether the district court erred in determining futility, we look to whether the Estate alleged sufficient facts to meet those three elements. Assuming *arguendo* that the Estate properly alleges Hand's constitutional rights were

violated (i.e., he had a serious medical condition that required elevated care and treatment which he did not receive), it fails on the second and third requirements.

The second requirement is that Centurion had a custom or policy that amounted to deliberate indifference to Hand's medical needs. The Estate alleges three Centurion policies or customs they argue show deliberate indifference: (1) it routinely understaffs the RMC on weekends and weeknights; (2) it does not have a policy or procedure in place to ensure healthcare providers receive timely lab results; and (3) it does not have a policy to ensure the doctors had access to the recent medical chart of the inmate. The Estate alleges these are simply carryovers from Corizon that the State of Florida previously determined to be inadequate. However, none of these allegations rise to the level required to show Centurion had a custom or policy that constituted deliberate indifference to Hand's constitutional rights. "In order for a plaintiff to demonstrate a policy or custom, it is generally necessary to show a persistent and wide-spread practice." *Id.* at 1290 (internal quotation marks and citation omitted). "Normally, random acts or isolated incidents are insufficient to establish a custom or policy" but instead "the incident must result from a demonstrated practice." *Id.* (citations omitted). The Estate makes generalized assertions about understaffing and failure to provide access to records, but conclusory statements are insufficient to properly allege a policy or custom. "A pattern of similar constitutional violations is ordinarily necessary." *Craig v. Floyd County*, 643 F.3d 1306, 1310 (11th Cir.

2011) (citations omitted and alterations incorporated). The Estate alleges no such pattern beyond conclusory statements that Centurion merely took over from Corizon without making changes and Corizon had not performed at the level required by their contract.

Most importantly, even if the Estate were to have alleged a policy or custom, it certainly fails to establish causation. In fact, the Estate's allegations specifically state that Dr. Santiago failed to review the blood results or to make changes despite Hand's worsening condition. This is precisely contrary to its allegation that Centurion failed to make test results and files available to the healthcare providers. Instead, the Estate alleges that despite the results being available and a marked worsening of Hand's condition, Dr. Santiago did not change the treatment protocol or review the available blood results. Therefore, the Estate fails to allege facts that, even considered in the light most favorable to its claims, could establish that a policy or custom caused Hand's constitutional violation.

As a result, we find the amendment would be futile as to Centurion and that the district court did not err when it denied leave to amend the complaint with respect to Centurion.

ii. Claims against Dr. Santiago

We now turn to whether the district court erred in its denial of the motion to amend as it pertains to Dr. Santiago. Contrary to the determination as to Centurion, we find that it did.

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

To prevail on a claim of deliberate indifference, a prisoner must prove that his physician knew of and disregarded a risk of serious harm to his health. *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). "[D]eliberate indifference describes a state of mind more blameworthy than negligence" and "requires more than ordinary lack of due care for the prisoner's interests or safety." *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (internal quotation marks and citation omitted). The physician "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837.

In the situation here, the question is whether the proposed amendment provides sufficient allegations of fact that would allow for the case to proceed beyond the pleading stage. The facts must be accepted as true for the purposes of a motion to dismiss. Most of the cases relied upon by the Appellees pertain to cases that were resolved on summary judgment which allows for the facts to be supported by evidence including expert witness testimony. Yet, that is not where we stand – we are deciding whether Plaintiff alleged enough to survive a motion to dismiss.

The proposed Third Amended Complaint alleges that Dr. Santiago knew the signs and symptoms of sepsis, observed Hand,

reviewed the nursing notes regarding Hand's decline, knew the RMC could not handle sepsis and that Hand should be transferred to receive a higher level of care, and instead chose to make no changes to the treatment.

These are fairly detailed allegations that would require some evaluation of the evidence – *which takes us beyond the pleading stage*. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence. . . ." *Id.* at 842. Medical treatment violates the Eighth Amendment's prohibition on cruel and unusual punishment "only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Nam Dang ex rel. Vina Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1280 (11th Cir. 2017) (internal quotation marks omitted). "An inmate who complains that delay in medical treatment rose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment to succeed." *Hill v. DeKalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994) (footnote omitted), *overruled in part by Hope v. Pelzer*, 536 U.S. 730, 739 n.9 (2002). The common theme here is evidence.

At play within these allegations are two matters that require evidence: (1) treatment "so cursory as to amount to no treatment at all," *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985), and (2) "delay of treatment for obviously serious

conditions where 'it is apparent that delay would detrimentally exacerbate the medical problem,' the delay does seriously exacerbate the medical problem, and the delay is medically unjustified," *Taylor v. Adams*, 221 F.3d 1254, 1259-60 (11th Cir. 2000) (quoting *Hill*, 40 F.3d at 1187-89). *See also Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986) ("Whether an instance of medical misdiagnosis resulted from deliberate indifference or negligence is a factual question requiring exploration by expert witnesses.").

The court is not in a position to make such a determination on the face of the complaint alone. The court has no medical knowledge to determine whether Dr. Santiago's choices were the equivalent of putting a band-aid on a gunshot wound. Further, a plaintiff is not required to put expert testimony within a complaint itself – that would raise the pleading standard well-beyond what is required by Rule 8.

Based on the above, we find that the proposed amended complaint is not futile as it clearly articulates a claim that survives the standard applied to a motion to dismiss.

The district court also noted it would deny the proposed Third Amended Complaint because the Estate previously had the opportunity to cure after dismissal of the First Amended Complaint and that it dismissed the Second Amended Complaint for substantially the same reasons as the first. Repeated failures to cure deficiencies can serve as an independent ground for denying leave to amend a complaint. *See McKinley*, 177 F.3d at 1258. But we find that there were no repeated failures to cure any deficiencies with

respect to Dr. Santiago. So the district court's alternative basis for denying leave to amend was an abuse of discretion.

Here, the first complaint addressed by the district court was the "First Amended Complaint," as that was the complaint upon which the Defendants removed this matter to federal court. The First Amended Complaint was dismissed, and the district court provided its analysis as to the failures to articulate claims against the individual defendants and noted that "it appears unlikely that it will be able to plead a § 1983 claim against the individual defendants" but would permit an amended complaint to be filed. That permission resulted in the Second Amended Complaint. The district court then found that the Second Amended Complaint also failed to state a claim against the individual defendants and dismissed the § 1983 claims. As such, despite the defendants' attempt to couch this as a "fourth" attempt to state a § 1983 claim, it is clear that this would only be a "third" attempt and only a "second" attempt to fix a deficiency noted by the Court.

Moreover, even the district court and the Appellees noted that the proposed Third Amended Complaint contained substantially similar factual allegations to the Second Amended Complaint. While a full appellate review of the Second Amended Complaint's dismissal falls outside the scope of this specific appeal, we can consider whether the district court previously applied too high a standard in its prior dismissal of the Second Amended Complaint in considering whether it abused its discretion in the denial of the request to amend. It is clear from our review of the Third Amended

Complaint that the Estate has now fixed the prior deficiencies noted by the district court. While we do not disturb the actual order of dismissal for the Second Amended Complaint, it would appear that the Second Amended Complaint would have stated a claim against Dr. Santiago. In its dismissal of the Second Amended Complaint, the district court relied in part on the prior treatment of Hand's cancer in its determination of the quantity and quality of care he received. However, there is no basis for the finding that if a prisoner were treated successfully once, he would not have a claim for inadequate treatment of another condition that comes up afterwards. Further, case law upon which the district court relied also related to decisions made on summary judgment as opposed to those that pertained to a motion to dismiss for failure to state a claim. And the district court itself did not see much difference between the Second and Third Amended Complaints. As such, any deficiency in the Estate's complaint was cured on only the second attempt, and repeated failure was not a proper ground to deny leave to file the Third Amended Complaint.

"A district court's discretion to deny leave to amend a complaint is 'severely restricted' by Fed. R. Civ. P. 15, which stresses that courts should freely give leave to amend 'when justice so requires.'" *Woldeab v. Dekalb Cnty. Bd. Of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018) (quoting *Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988)). In the case at hand, we find that justice requires permitting a Third Amended Complaint because it states a § 1983 claim against Dr. Santiago. The district court erred in

finding the amendment would be futile as to Dr. Santiago. Though the district court made a cursory reference to failure to cure, the bulk of the order clearly tailors its analysis to futility, and as we have explained, the two issues are not readily separated in this appeal because the district court dismissed the Second Amended Complaint for largely the same reason that it found the Third Amended Complaint to be futile. We make no finding as to whether or not the claims will survive higher scrutiny once evidence may be presented and considered. Rather, we merely find that the pleading standard was satisfied and therefore, the amendment should have been permitted.

IV. CONCLUSION

Based on the above, we find it appropriate to permit an additional amended complaint as it pertains to the Estate's § 1983 claims against Dr. Santiago. However, as to any claims against Centurion, we find that the Estate had sufficient opportunity to make a claim against them and still failed. Therefore, the judgment of the district court is **AFFIRMED in part** as it pertains to the dismissal of Centurion and **REVERSED AND REMANDED in part** with regard to Dr. Santiago and instructions to permit the amended complaint against him as to the § 1983 claims.

LUCK, Circuit Judge, concurring in part and dissenting in part:

On its way to partly affirming and partly reversing the district court's order denying leave to file the third amended complaint, the majority opinion reaches three conclusions. First, it finds that the Estate of Glenn Mitchell Hand abandoned its 42 U.S.C. section 1983 claims against Dr. David Rodriguez-Rivera, Dr. Jean Max Saint Charles, and Nurse Drianna Nishell Law. Second, the majority opinion affirms the denial of the estate's motion for leave to file the third amended complaint as to Centurion of Florida. And third, the majority opinion reverses the denial of the estate's motion for leave to file the third amended complaint as to Dr. Juan Santiago. I concur in the first two conclusions, but I respectfully dissent as to the third.

The district court denied leave to file the third amended complaint as to Dr. Santiago on two independent grounds. First, the district court denied leave because any amendment would have been futile. And second, the district court denied leave because the estate had repeatedly failed to cure defects in its earlier complaints. *See Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005) ("The district court . . . need not allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile. . . . [The plaintiff's] repeated failure to cure deficiencies by [previous] amendments is an explicitly permitted reason for which the district

court was entitled to deny his motion to amend." (quotations omitted, second alteration in original)).

On appeal, the estate argues that amending the complaint would not have been futile. But the estate forfeited any challenge to the district court's second ground for denying leave—that the estate repeatedly failed to cure deficiencies. The estate's initial brief never mentioned this issue, not even in a passing or perfunctory manner. Dr. Santiago's response pointed this out but, in reply, the estate continued to ignore the repeated-failure-to-cure issue. The estate was asked during oral argument to identify where its briefs raised the issue. The estate deferred the question to rebuttal and then began rebuttal by conceding it was "unable to find an explicit reference" to the repeated-failure-to-cure issue in its briefs.

"To obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must convince us that every stated ground for the judgment against him is incorrect." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). "When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed." *Id.*

"That is the situation here." *See id.* The estate failed to argue on appeal—"plainly and prominently"—that the district court erred in finding it repeatedly failed to cure deficiencies in its earlier complaints. *See id.* at 681 (quotation omitted). Thus, the estate

abandoned this independent basis for denying leave to amend. I would affirm the judgment across the board.