In the

United States Court of Appeals

For the Seventh Circuit

No. 21-1132

JERMARI C. DORSEY,

Plaintiff-Appellant,

v.

JOHN VARGA, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Western Division.
No. 20-cv-50030 — **Iain D. Johnston**, *Judge*.

ARGUED OCTOBER 24, 2022 — DECIDED DECEMBER 15, 2022

Before HAMILTON, ST. EVE, and KIRSCH, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Jermari Dorsey suffered a serious back injury while incarcerated. He alleges that his efforts to seek medical treatment were met with resistance from corrections officers, a nurse, and a doctor. Instead of being treated for back pain, Dorsey was prescribed psychiatric medications without his knowledge or consent. Dorsey filed suit, seeking redress for Eighth Amendment and due process violations. The district court screened his complaint as required by

28 U.S.C. § 1915A and determined that Dorsey had improperly joined unrelated claims in a single lawsuit. The court struck the complaint and denied Dorsey's motion to appoint counsel, but it invited Dorsey to file an amended complaint that cured the joinder problem. Dorsey attempted to comply with the court's instructions but to no avail. After deeming three amended complaints unsatisfactory, the district court dismissed the case. This appeal followed, and we appointed counsel to represent Dorsey.[1]

Resolving joinder issues and deciding whether to recruit counsel are issues left to the district court's sound discretion, but the court must exercise that discretion within the bounds set by statute and caselaw. In handling this case, the district court went outside those bounds in some respects. Therefore, we affirm the judgment in part, reverse in part, and remand for further proceedings.

I. Background

A. Factual Background

We take the factual allegations in Dorsey's third amended complaint as true at the screening stage. *Gomez v. Randle*, 680 F.3d 859, 864 (7th Cir. 2012). Dorsey was unrepresented before the district court, so we construe his filings liberally. *Shaw v. Kemper*, 52 F.4th 331, 334 (7th Cir. 2022).

1. Dorsey's Back Injury

Dorsey is an Illinois state prisoner. The washing machines in the prison are not attached to drainpipes; water drains into buckets, which inmates must empty manually. On January 31,

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[1] We thank Olaniyi Solebo for his service to his client and this court.

2018, Dorsey was emptying a bucket when he felt a pop in his lower back and felt pain shoot down his leg. He informed Mr. Julius, a corrections officer, about his injury and asked for permission to see a nurse. Julius told Dorsey to "go lay down" and that "it was probably a sprain." Dorsey took ibuprofen and lay down for two hours, but his pain worsened. He informed Julius that his pain had gotten worse and again requested permission to seek medical care. Julius responded that he "didn't care how much pain [Dorsey] was in," told Dorsey to "go sleep it off," and threatened to write Dorsey up. Dorsey went back to his cell but was unable to sleep.

The next morning, Dorsey could barely move. He asked his cellmate to bring him a form so he could request medical care. Dorsey detailed the circumstances of his injury and his symptoms, and his cellmate submitted the form on Dorsey's behalf. Days passed, and Dorsey received no medical treatment.

2. The Appointment with Nurse Doe

On February 6, six days after his injury, Dorsey was called to the healthcare unit. A registered nurse he identifies as Jane Doe examined him. Dorsey rated his pain as a 12 on a 1–10 scale. The nurse tested Dorsey's range of motion and asked him to sit, which he refused to do because standing up afterward would be too painful. The nurse stated that she "did not care how much pain [Dorsey] was in" and refused to put in a request for him to see a doctor. She stated that protocol was for Dorsey to request another appointment after at least two days, then a third appointment at least two days after the second—only then could Dorsey see a doctor. She gave Dorsey an 18-pack of ibuprofen and sent him back to his cell.

The nurse's progress notes indicate that she did not take Dorsey's injury as seriously as Dorsey did. Although she reported that he "presents as not being able to fully bend forward or side to side," that he is "unable to sit [be]cause [it is] difficult to get up," and that he experiences "distress or pain with movement" when bending, she noted no gait disturbance, "[s]welling, redness, bruising, tenderness to touch, limitation to movement," numbness, or tingling. She also suggested that Dorsey was exaggerating his symptoms, writing that she "viewed [Dorsey] ambulate up [the] hall" without difficulty, but when he entered the waiting room, he "began moaning [and] groaning when he knew he was being observed." Dorsey characterizes this as a false statement that "could cause others who read her report not to take [him] seriously."

3. The Prescriptions

Dorsey left his February 6 appointment under the impression that he would have to request medical appointments two more times before a doctor would see him. But that same day, unbeknownst to Dorsey, Dr. Doyle—whom Dorsey describes as a "[p]sych [d]octor"—wrote him three prescriptions. The prescriptions were for an anti-anxiety medication, an anti-convulsant, and an anti-depressant, which Dorsey calls "[p]sych [m]eds." Dorsey insists that he did not consent to take these medications and that he had not seen Dr. Doyle or any other psych doctor except for routine intake.

To Dorsey's surprise, on February 8, two days after his appointment with the nurse, he was told over the intercom to "report to medline," the window from which inmates receive medications. Because Dorsey was still in pain, he asked a corrections officer to call him a ride. The officer refused, so

Dorsey walked. Dorsey took the four pills he received at medline, believing they were for his back injury. But the pills exacerbated his symptoms rather than relieved them. Within 10 minutes, Dorsey began feeling dizzy and lightheaded, and his pain did not subside.

The next morning, February 9, Dorsey was called back to medline, but he was in too much pain to walk. He relayed that message to the corrections officer on duty and requested a ride. The officer refused to order Dorsey a ride and threatened him with a disciplinary write-up for refusing to report to medline. Dorsey clarified that he was not refusing; he simply could not walk that far. Dorsey did not visit medline that morning, and the same pattern recurred in the evening: Dorsey was called to medline, he asked for a ride, an officer refused to call him one, and the officer threatened him with a write-up. Dorsey asked to speak to a supervising officer, Lieutenant Andrews. Dorsey explained that he "was not refusing but that [he] had hurt [his] back and the medication they were giving [him] was not helping with the pain." Lt. Andrews arranged for a ride to medline, where Dorsey again received four pills he believed were for his back pain.

When Dorsey returned to his cell, Lt. Andrews stated that the nurse on duty had said that Dorsey was taking psych meds. Lt. Andrews added that Dorsey would receive no more rides to medline. Dorsey objected, stating that he had never seen a psych doctor and that if he had been prescribed psych meds, "it was bogus and illegal." Lt. Andrews replied that "the nurse said [the pills] were mandatory" and that if Dorsey did not take them, then he "would get tickets and would eventually be put in segregation." Dorsey explained the

negative effects the prescriptions were having, but Lt. Andrews was unmoved.

Over the next several days, corrections officers repeatedly disciplined Dorsey for failing to take his pills. In total, Dorsey received four disciplinary tickets for failing to visit medline. Dorsey's prescriptions were discontinued on February 13, one week after they were first prescribed.

B. Procedural Background

After exhausting his administrative remedies, Dorsey filed this lawsuit on January 21, 2020. His complaint spanned 46 pages, including attachments, and asserted three claims under 42 U.S.C. § 1983 against 12 defendants. Two claims alleged Eighth Amendment violations based on the poorly maintained washing machines and deliberate indifference to a serious medical condition, his back injury. The third alleged a due process violation, that Dorsey was prescribed medications without his consent. Along with his complaint, Dorsey moved for the district court to appoint counsel for him.

The district court[2] screened the complaint pursuant to 28 U.S.C. § 1915A. That section, part of the Prison Litigation Reform Act of 1995 (the "PLRA"), requires the court to review suits filed by prisoners against "a governmental entity or officer or employee of a governmental entity" before defendants are served with process, § 1915A(a), and to "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks

[2] Dorsey's case was initially assigned to Chief Judge Pallmeyer. It was reassigned to Judge Johnston on September 29, 2020.

monetary relief from a defendant who is immune from such relief." § 1915A(b).

On June 15, 2020, the court found that joinder was improper and held that the case could not proceed because "[t]he claims that [Dorsey] seeks to raise in this lawsuit involve separate conduct by separate sets of Defendants, and the claims are legally and factually distinct from each other." The court gave Dorsey advice about how to replead his case, struck the complaint, denied his motion to recruit counsel, and invited Dorsey to file an amended complaint.

Dorsey accepted that invitation and filed a first amended complaint that significantly improved upon the original. The complaint now totaled 17 pages, named six defendants, and asserted a single claim, based on an "8th Amendment Violation (Deliberate Indifference to Medical Needs)." The district court acknowledged Dorsey's efforts to streamline his complaint and to address the misjoinder issue, but it found that "he still makes allegations about several distinct aspects of his confinement at the prison." Although Dorsey asserted only one claim, the court construed Dorsey's allegations as raising both an Eighth Amendment claim and a due process claim. These claims, the court held, were still too distinct to be joined in a single case. On August 7, 2020, the court struck his complaint, gave Dorsey leave to file a second amended complaint, and warned that failing "to submit a second amended complaint in accordance with the principles set forth in this order … will result in dismissal of this lawsuit."

Dorsey's second amended complaint was largely identical to his first amended complaint, except that he named five defendants instead of six. He acknowledged the similarities, explaining that he could not do research because the law library

was closed due to the COVID-19 pandemic and that he was "having a hard time understanding" how to amend his complaint. Again, he moved for the court to appoint counsel. On October 8, 2020, the court struck Dorsey's complaint and denied his motion to recruit counsel for the third time. Despite the prior admonishment that Dorsey's second amended complaint would be his last, the court gave him one more chance to amend his complaint. Dorsey filed his third amended complaint on November 30, 2020, which is the operative complaint for purposes of this appeal. This complaint was virtually identical to the second amended complaint. On January 5, 2021, the court struck the complaint, writing that "the case is dismissed without prejudice based on Plaintiff's failure to comply with the prior orders of this Court. All pending motions are terminated as moot. Final judgment shall enter. Case closed." Dorsey appealed.[3]

C. Dorsey's Claims

Dorsey's third amended complaint names five defendants: Lt. Andrews, Nurse Doe, Dr. Doyle, Julius, and Wexford Health Sources, Inc., the entity that provides medical services at the prison. Although Dorsey pleaded only one claim, the district court correctly recognized that his complaint contains two: an Eighth Amendment claim for deliberate indifference to a serious medical condition, his back injury, and a due

[3] Although a dismissal without prejudice is not ordinarily an appealable final judgment, the dismissal here was final because the court characterized it as final and because the two-year period to file a § 1983 action in Illinois had expired, which prevents Dorsey from refiling his claims in a subsequent lawsuit. *See Towne v. Donnelly*, 44 F.4th 666, 670 (7th Cir. 2022); *Lee v. Cook County*, 635 F.3d 969, 972 (7th Cir. 2011). We therefore have appellate jurisdiction under 28 U.S.C. § 1291.

process claim for prescribing Dorsey psychiatric medications without his consent. But because Dorsey believes his complaint presents a single claim, he does not specify to which defendants each claim applies.

As we read the complaint, the Eighth Amendment claim pertains to all four individual defendants. Dorsey alleges that Julius and Lt. Andrews hindered his attempts to receive medical care for his back injury and that Nurse Doe disregarded his condition. It is less clear whether this claim implicates Dr. Doyle, but liberally construing the complaint, we conclude that it does. Dr. Doyle wrote the prescriptions on the same day that Nurse Doe examined Dorsey, so Dr. Doyle may have been aware of Dorsey's back injury at that time. Further, Dorsey alleges that the prescriptions exacerbated his back injury. Dorsey's second claim, for a due process violation, implicates Nurse Doe and Dr. Doyle, who evaluated Dorsey medically and, in the case of Dr. Doyle, prescribed the medications. We cannot discern, however, whether either or both claims implicate Wexford because the complaint contains just one sentence about Wexford: "Wexford is the private Healthcare provider and is responsible for the Protocol, Policies and training of its nursing staff and Doctors."

We need not resolve the complaint's ambiguity regarding Wexford. Even liberally construed, this single sentence is insufficient to "plead some facts that suggest a right to relief that is beyond the speculative level." *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015) (quoting *Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011)). To succeed on a § 1983 claim against a private corporation acting under color of state law, a plaintiff must show a corporate custom or practice so widespread that it would be sufficient to state a *Monell* claim if the

defendant were a municipal government. *See Howell v. Wexford Health Sources, Inc.*, 987 F.3d 647, 652–54 (7th Cir. 2021) (citing *Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010)); *see also Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978). Dorsey alleges that Wexford sets the medical policies at the prison, but he fails to allege how he was injured by those policies, as opposed to "one or a few rogue employees." *Howell*, 987 F.3d at 654. The district court thus did not err by dismissing claims against Wexford. *See* 28 U.S.C. § 1915A(b)(1) (instructing district courts to screen cases for "fail[ing] to state a claim upon which relief may be granted"); *cf. Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) (stating that a plaintiff should have at least one chance to replead a complaint).

We affirm the dismissal of any claims against Wexford. Subsequent references to "the defendants" in this opinion refer only to the individual defendants.

II. Issues on Appeal

Dorsey makes three arguments on appeal: (1) joinder was proper; (2) the district court abused its discretion when it dismissed his case for failure to comply with its orders; and (3) the district court abused its discretion when it denied his motions to appoint counsel. We agree with Dorsey on the first two points but not the third.

A. Permissive Joinder

Dorsey argues that the district court erred by holding that his claims were misjoined. Dorsey believes that his claims satisfy Federal Rule of Civil Procedure 20(a)(2), which permits a plaintiff to join defendants in a single action if "(A) any right to relief is asserted against them jointly, severally, or in the

alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action."

We review a district court's refusal to join parties under Rule 20 for abuse of discretion. *Thompson v. Boggs*, 33 F.3d 847, 857–58 (7th Cir. 1994). A district court may, in its discretion, deny joinder even if the Rule 20(a)(2) requirements are met. *UWM Student Ass'n v. Lovell*, 888 F.3d 854, 863 (7th Cir. 2018) (listing prejudice, expense, and delay as reasons to deny otherwise-proper joinder). But one way a district court can abuse its discretion is by committing an error of law. *Lukaszczyk v. Cook County*, 47 F.4th 587, 598 (7th Cir. 2022).

The district court's orders denying joinder indicate that the court believed that Dorsey's claims did not satisfy the requirements of Rule 20(a)(2). The first order stated:

> The claims that Plaintiff seeks to raise in this lawsuit involve separate conduct by separate sets of Defendants, and *the claims are legally and factually distinct* from each other. Thus, Plaintiff *may not use* this single case as a vehicle to litigate all three of his unrelated claims …. Plaintiff must pick the claim he wishes to pursue in this lawsuit before the court will make any determination concerning the merits of any of his claims.

(emphases added). The other orders read similarly. The second endorsed the reasons given in the prior order, then elaborated how Dorsey could amend his complaint to comply with Rule 20(a)(2)'s joinder requirements. After the case was transferred, the court issued its third order, which adopted the reasoning from the second order to support its conclusion

that "Plaintiff may not bring unrelated claims against unrelated Defendants in a single lawsuit." Because none of the orders striking Dorsey's complaint stated that the court would use its discretion to require Dorsey's claims to proceed separately even if Rule 20(a)(2) allowed joinder, we conclude that the district court believed that Rule 20(a)(2) precluded joinder.

Our inquiry, therefore, is whether the district court correctly applied Rule 20(a)(2) to Dorsey's allegations. The construction of Rule 20—like other Federal Rules of Civil Procedure—is a question of law that we review de novo. *See Mother & Father v. Cassidy*, 338 F.3d 704, 708 (7th Cir. 2003) (holding that the construction of Rule 41 is a question of law).[4]

1. Same Transaction or Occurrence

Dorsey's claims satisfy the first requirement for permissive joinder, namely, that the claims against all defendants "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences." Fed R. Civ. P. 20(a)(2)(A). Both of his claims relate to the following series of events that occurred over a two-week period: Dorsey's back injury, his attempts to receive medical treatment, his appointment with

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[4] The four other circuits to have addressed this question in precedential opinions have also concluded, expressly or impliedly, that whether Rule 20 permits parties to be joined is a question of law. *See Harnage v. Lightner*, 916 F.3d 138, 140 n.2 (2d Cir. 2019) ("We … review a district court's *sua sponte* dismissal under § 1915A for failure to comply with Rules 8 and 20 *de novo*."); *Rush v. Sports Chalet, Inc.*, 779 F.3d 973, 974 (9th Cir. 2015) ("We review *de novo* the district court's holding that the codefendants were improperly joined under Rule 20(a)(2)."); *Swan v. Ray*, 293 F.3d 1252, 1253 (11th Cir. 2002) (per curiam) (implicitly applying de novo review); *Watson v. Blankinship*, 20 F.3d 383, 389–90 (10th Cir. 1994) (same).

Nurse Doe, the prescriptions Dr. Doyle wrote for him, and his conflicts with corrections officers about taking those prescribed medications. When liberally construed, Dorsey's complaint plausibly alleges that the prescriptions relate to his back injury. Dr. Doyle wrote the prescriptions on the same day Dorsey visited the infirmary, and Nurse Doe's comments that Dorsey was lying about or exaggerating his pain may have influenced Dr. Doyle's conclusion that Dorsey should be prescribed psychiatric medications. This connection satisfies Rule 20(a)(2)(A).

2. Common Question of Law or Fact

Dorsey's claims also satisfy the second requirement, that at least one "question of law or fact common to all defendants will arise." Fed R. Civ. P. 20(a)(2)(B). As discussed above, construing the complaint liberally, we understand Dorsey to bring his Eighth Amendment claim against all four defendants. This claim requires a plaintiff to "show that '(1) he had an objectively serious medical need (2) to which the defendants were deliberately indifferent.'" *Brown v. Osmundson*, 38 F.4th 545, 550 (7th Cir. 2022) (internal alteration omitted) (quoting *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 241 (7th Cir. 2021)). Proving that his injury constituted an objectively serious medical need and that each defendant was deliberately indifferent to it will necessarily involve the question of the condition of Dorsey's back pain. This common question of fact satisfies Rule 20(a)(2)(B).

* * *

Dorsey's claims meet both requirements of Rule 20(a)(2), so joinder is legally permissible. The district court's contrary

conclusion was an error of law and therefore was an abuse of discretion.

B. Dismissal for Failure to Comply

Dorsey next argues that the district court erred by dismissing his case for misjoinder because dismissal for misjoinder is inappropriate under Federal Rule of Civil Procedure 21, which provides that "[m]isjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." But the district court did not dismiss Dorsey's case for misjoinder. Rather, it dismissed for failure to comply with its orders to cure what it considered misjoinder in Dorsey's complaint. A district court has the inherent power to manage its docket, which includes the power to dismiss a case for "failure to comply with valid orders," a category of dismissal for failure to prosecute. *Thomas v. Wardell*, 951 F.3d 854, 862 (7th Cir. 2020) (citation omitted). The question, therefore, is not whether dismissal is an appropriate remedy for misjoinder but whether dismissing the case for failure to comply with court orders was an abuse of discretion.

We hold that the dismissal was an abuse of discretion in this case. While a district court has the inherent power to dismiss for failure to comply with its orders, Dorsey's third amended complaint properly joined the defendants, as explained above. Thus, the order requiring Dorsey to replead his complaint was invalid because a district court cannot order a plaintiff to correct misjoinder when joinder is, in fact, proper.

We do not mean to suggest that a district court's error of law deprives it of all power to dismiss a case for failure to prosecute. A court may still dismiss for failure to prosecute when, for example, a party repeatedly fails to meet deadlines or engages in other "contumacious conduct." *Id.*; *see also, e.g.*, *Krivak v. Home Depot U.S.A., Inc.*, 2 F.4th 601, 606 (7th Cir. 2021) (affirming dismissal for failure to prosecute where the plaintiff's attorney "missed many conferences," "[drew] a discovery sanction for placing little importance on court orders," and ignored the court's "clear and final warning" that dismissal would follow); *Cartwright v. Silver Cross Hosp.*, 962 F.3d 933, 936 (7th Cir. 2020) (holding that "the judge had ample grounds to dismiss" based on conduct including "skipp[ing] three scheduled depositions" and "fil[ing] dozens of motions that violated local rules and the court's standing orders"). Our holding is a narrow one. A district court abuses its discretion when its sole reason for dismissing a case is failure to comply with instructions that are wrong as a matter of law.

C. Appointment of Counsel

Finally, Dorsey asks us to reverse the district court's denial of his motion to appoint counsel. Under 28 U.S.C. § 1915(e)(1), a "court may request an attorney to represent any person unable to afford counsel." When deciding whether to appoint counsel, the court asks: "(1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc) (citation omitted). The second question involves an inquiry into "the difficulty of the plaintiff's claims and the plaintiff's competence to litigate those claims himself," *id.* at 655, as well

as the "strength or weakness" of the claims. *Watts v. Kidman*, 42 F.4th 755, 761 (7th Cir. 2022).

We review the denial of a motion to appoint counsel for abuse of discretion. *Pruitt*, 503 F.3d at 658. We ask "whether the district court applied the correct legal standard and reached a reasonable decision based on facts supported by the record." *Id.* Where there is an abuse of discretion, we grant relief only when the plaintiff has been prejudiced—that is, when there is "a reasonable likelihood that the presence of counsel would have made a difference in the outcome of the litigation." *Id.* at 659 (emphasis omitted).

The district court found that Dorsey made a reasonable attempt to obtain counsel himself, but it declined to recruit counsel because he was capable of litigating his claims himself. Dorsey contends that the denial of his motions to appoint counsel was an abuse of discretion because the district court failed to consider the complexity of his claims, the seriousness of his alleged injury, and changed circumstances. We, however, see no abuse of discretion.

1. Complexity

As for the complexity of his claims, Dorsey argues that the difficulty of proving that the defendants acted with deliberate indifference toward his back injury obligated the district court to appoint counsel. We disagree. While we have observed that proving deliberate indifference is complex and may require a court to appoint counsel, we have emphasized that there is no rule that a district court must appoint counsel in certain types of cases or at certain stages of litigation. *See, e.g.*, *James v. Eli*, 889 F.3d 320, 327 (7th Cir. 2018). Further, the complexity of litigating a deliberate indifference claim increases as the case

progresses. *Id.* Here, Dorsey's requests for counsel came at the PLRA screening stage, when his only tasks were to comply with the Federal Rules of Civil Procedure and to plausibly allege facts that, if true, would entitle him to relief. The court's instructions about how to replead his claims and the liberal construction courts give pro se filings further lessened the complexity of his tasks. Dorsey's claims are not so complex that the district court abused its discretion by declining to appoint counsel for him.

2. Seriousness

Dorsey next argues that "[t]he severity of [his] injury and the serious nature of his claim regarding the psychiatric medication, further weighed in favor of the appointment of … counsel." He relies on *Perez v. Fenoglio*, which stated in dicta that "[w]here an inmate alleges an objectively serious medical condition, it may be better to appoint counsel … than to dismiss a potentially meritorious claim and leave the prisoner in harm's way." 792 F.3d at 784. But this warning concerned dismissing a claim when the alleged injury itself may have contributed to the plaintiff's failure to adequately plead deliberate indifference. *See id.* There is no indication that Dorsey's injury affected him in this way—indeed, Dorsey's filings were impressively cogent. Thus, the seriousness of Dorsey's alleged injury did not make the district court's decision not to appoint counsel an abuse of discretion.

3. Changed Circumstances

Finally, Dorsey argues that the onset of the COVID-19 pandemic was a material change from the circumstances that existed when he first moved for the court to appoint counsel. Beginning with his third motion to recruit counsel, Dorsey

explained that he was unable to access the prison's law library and was therefore unable to perform research. He contends that our decisions in *Eagan v. Dempsey*, 987 F.3d 667 (7th Cir. 2021), and *Santiago v. Walls*, 599 F.3d 749 (7th Cir. 2010), establish that a district court abuses its discretion when it denies a subsequent motion to appoint counsel without considering changed circumstances since the time of the initial motion.

The changed circumstances here were not so significant as to require the district court to appoint counsel for Dorsey. *Eagan* and *Santiago* involved much more dramatic changes than those Dorsey experienced. In *Eagan*, the litigation involved discovery motion practice and had progressed to the summary judgment stage, the plaintiff had only an eighth-grade education and suffered from severe mental illness, and the inmate who had been helping the plaintiff had been transferred to another prison. 987 F.3d at 673–74, 677–79, 684. In *Santiago*, the plaintiff had been transferred to a different prison, where he lacked access to witnesses, documents, and defendants, and he had to prepare to try seven claims against eight defendants, including one unknown defendant. 599 F.3d at 762–64. Dorsey's case, in contrast, is in the earliest stages, before any discovery, summary judgment, or trial obligations have arisen; he has some college education and is a skilled writer; and he has alleged no mental illness or intellectual disability that prevents him from adequately representing himself. While he lacked access to the law library during the height of the pandemic, the district court gave clear instructions about how to replead his claims, and he would not have had to perform additional legal research to follow those instructions. Despite these changed circumstances, the district court did not abuse its discretion by failing to appoint counsel.

* * *

The fact that the district court did not abuse its discretion in denying Dorsey's previous motions does not necessarily mean that he cannot receive the assistance of counsel later in this case. The district court's denials of Dorsey's motions to appoint counsel were without prejudice, so he is free to request counsel again on remand.

III. PLRA Screening and Joinder

We close by discussing the PLRA's requirement that district courts screen complaints filed by prisoners against governmental entities, officials, and agents. *See* 28 U.S.C. § 1915A. A common issue district courts encounter is whether a complaint properly joins claims against several defendants, but our caselaw provides little concrete guidance on this point. Accordingly, we offer a framework a district court might apply when faced with a joinder issue when screening a complaint under the PLRA. To be clear, we do not mean to imply that this is the only acceptable screening process.

When a prisoner sues government defendants, we recommend that the district court assess whether joinder is proper under Rule 20 before considering the merits. The PLRA discourages prisoners from filing frivolous lawsuits by requiring prisoners who proceed in forma pauperis to pay the full filing fee in installments, 28 U.S.C. § 1915(b), and denying in forma pauperis status to prisoners who have accrued three "strikes"—cases "dismissed on the grounds that [they are] frivolous, malicious, or fail[] to state a claim upon which relief may be granted." § 1915(g); *see Atkins v. Gilbert*, 52 F.4th 359, 361–62 (7th Cir. 2022) (per curiam). Some prisoners attempt to circumvent the PLRA's fee requirements and avoid strikes by

filing "scattershot" complaints, which improperly join multiple unrelated claims against multiple defendants. *See, e.g.*, *Mitchell v. Kallas*, 895 F.3d 492, 503 (7th Cir. 2018); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011). Assessing whether joinder is proper before resolving the merits ensures that, regardless of the outcome of a case, the plaintiff pays the proper number of fees under § 1915(b) and receives the proper number of strikes, if any, under § 1915(g). *See Taylor v. Brown*, 787 F.3d 851, 853 (7th Cir. 2015) (noting that severing a case requires the payment of a second filing fee); *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (observing that by filing a scattershot complaint, a plaintiff might avoid a strike "if even 1 of his 50 claims were deemed non-frivolous").

If joinder is improper, the court has several options available to it. The court may strike the complaint and grant leave to replead. *See Perez*, 792 F.3d at 783. The court may dismiss improperly joined defendants if doing so will not prevent the plaintiff from timely refiling those claims. *See* Fed. R. Civ. P. 21 ("[T]he court may …, on just terms, … drop a party."); *Elmore v. Henderson*, 227 F.3d 1009, 1012 (7th Cir. 2000) (stating that a district court must not dismiss misjoined claims when there is a risk of "statute of limitations consequences"). Or the court may sever the case into two or more actions. Fed. R. Civ. P. 21. Because paying a second filing fee may impose a substantial financial burden on a prisoner, *see Taylor*, 787 F.3d at 853–84, the court should not sever claims without a plaintiff's consent or acquiescence. Instead, it should allow him to opt for partial dismissal rather than severance.

We suggest a district court faced with misjoined claims begin, as the district court did here, by striking the complaint, explaining the misjoinder, and giving the plaintiff at least one

chance to fix the problem. If the plaintiff proves unable or unwilling to correct the misjoinder by repleading his complaint, we recommend the approach taken by the district court in *Taylor*. The court can inform the plaintiff that it will dismiss certain defendants or sever certain claims unless the plaintiff otherwise resolves the issue by a deadline. *See id.* If dismissal will prevent refiling a claim due to the statute of limitations, the court should make clear the consequences of dismissal and severance to enable the plaintiff to make an informed decision about his case. This process will spare district courts the task of screening numerous iterations of complaints without prejudicing plaintiffs. We emphasize again that dismissing an entire case for misjoinder is improper and is reversible error if it prejudices a plaintiff's ability to refile his claims. *See Elmore*, 227 F.3d at 1012.

Once joinder problems are resolved, the court can consider the merits, complete the screening process, and return the case to the familiar path of federal civil litigation.

IV. Conclusion

For the foregoing reasons, we affirm in part and reverse in part the district court's dismissal of Dorsey's case and its striking of his third amended complaint. Those decisions are reversed as to defendants Andrews, Doe, Doyle, and Julius, and they are affirmed as to defendant Wexford. We affirm the denial of Dorsey's motion to appoint counsel.

On remand, the district court should complete the PLRA screening process, considering whether Dorsey's claims can continue in one proceeding and whether either states a claim upon which relief may be granted. If the court concludes that Dorsey's claims should be severed, it should not sever them

without giving Dorsey the option of abandoning one set of claims to avoid incurring a second filing fee. The court is free to consider appointing counsel for Dorsey, but it is not obligated to do so at this stage.

The judgment is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

HAMILTON, *Circuit Judge*, concurring. Based on existing circuit precedent, I join the court's opinion, including that portion affirming dismissal of plaintiff's claims against Wexford Health Sources, Inc. for lack of plausible allegations that his injuries were caused by a corporate policy, practice, or custom. Nevertheless, the Supreme Court has not applied the *Monell* standard to private corporations that act under color of state law. In an appropriate case we should reconsider and overrule our precedents that have applied *Monell* and refused to apply respondeat superior liability to private corporations like Wexford in cases brought under 42 U.S.C. § 1983. My reasons are explained in detail in *Shields v. Illinois Dep't of Corrections*, 746 F.3d 782, 789–96 (7th Cir. 2014); see also, e.g., *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214 (7th Cir. 2021) (both majority and dissenting opinions illustrating challenges prisoners face in seeking relief for deliberately indifferent health care); *Daniel v. Cook County*, 833 F.3d 728, 733–34 (7th Cir. 2016) (describing challenges prisoners face in holding individuals liable where problems in prison or jail health care are systemic: "individual defendants can defend themselves by shifting blame to other individuals or to problems with the 'system,' particularly where no one individual seems to be responsible for an inmate's overall care"); *Thomas v. Cook County Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010) (describing similar challenges in obtaining relief for deliberately indifferent health care in jail or prison).