NONPRECEDENTIAL DISPOSITION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 May 12, 2023*
Decided May 26, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-1148

JAMES OWENS, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 3:17-CV-00667-SMY
NICHOLAS LAMB, et al., *Defendants-Appellees*.	Staci M. Yandle, *Judge*.

O R D E R

James Owens, an Illinois prisoner, alleges two claims. First, he asserts that his doctor and others ignored for months his need for a wheelchair to resolve his severe pain from walking. Second, without access to a wheelchair, his doctor and a lieutenant knew that he could not get his meals. He has sued them for violating his Eighth

* 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).

Amendment rights, and the case was resolved in stages. First, the district court dismissed at screening the claim that the doctor denied Owens the means to get nutrition; then it rejected as unexhausted his claim that the doctor refused to treat his pain. Both rulings were incorrect: Owens adequately stated a claim that the doctor unlawfully denied him nutrition, and the ruling about exhaustion conflicts with our circuit law. But the court properly resolved all other claims; thus we affirm in part and vacate and remand in part.

Background

We begin with Owens's allegations that, beginning in October 2015 while he was incarcerated at Illinois's Lawrence Correctional Center, his doctor, John Coe, and others left him in pain for months. Owens uses a cane to walk, and that month he told a prison lieutenant about his severe lower body pain when walking. The lieutenant in turn informed the health unit. Eventually, Owens's pain got so bad that he had to go to the health unit, but a nurse (identified later through discovery as Amy Ulrey) refused to allow him a wheelchair to help him get there. She made him hobble to the unit in pain, where she briefly attended to him. Because he could barely walk back, a guard told him to return to the waiting room. He did, and he asked that Dr. Coe treat his pain, to no avail. (Eventually, the lieutenant to whom Owens had first complained about his pain got a wheelchair and took him back to his cell.) Over the next three months, Owens met three times with Dr. Coe. Each time, he told the doctor that he needed a wheelchair because walking created severe pain. Dr. Coe refused to provide the wheelchair, even though Owens told him that nothing else relieved the pain. Finally, in February 2016, after months during which Dr. Coe knew that, without a wheelchair, walking left Owens in severe pain, Dr. Coe ordered the wheelchair.

Owens also alleges that, during the time before Dr. Coe ordered the wheelchair, he told Dr. Coe that he faced another problem—without a wheelchair, his pain disabled him from getting to the dining hall to eat. For 11 days, from October 30 to November 10, Owens received only one meal a day and missed at least 11 meals because he could not walk to get food. He twice told Dr. Coe during these 11 days that his inability to walk and the lack of a wheelchair kept him from getting his meals. But the doctor still refused to order a wheelchair. (Before then, Owens also once told the prison lieutenant that he had not eaten lunch one day and could not get to the dining hall without a wheelchair.)

Owens filed a grievance about inadequate care in 2016, using the prison's "emergency" procedure. The warden decided that the grievance was not an emergency, and the Administrative Review Board rejected Owens's appeal. The Board told Owens

to submit responses from his counselor, grievance officer, and the warden—the requirements for prisoners who invoke the "standard" grievance procedure.

Next, Owens turned to federal court. He sued Dr. Coe, Nurse Ulrey (initially named as Jane Doe), the prison lieutenant, and the warden under 42 U.S.C. § 1983. The district court identified two Eighth Amendment claims. The court allowed the first claim, against all defendants for deliberate indifference to Owens's pain from walking without a wheelchair, to proceed. The court dismissed the second claim, against Dr. Coe and the lieutenant for preventing Owens from getting meals, on the ground that a denial of 11 meals in 11 days did not state a claim for inadequate nutrition. Owens later moved for recruited counsel, but the court denied the motion, reasoning that Owens's filings showed that he could adequately represent himself.

The rest of the case ended in stages. First, Dr. Coe moved for summary judgment on the deliberate indifference to pain claim, successfully arguing that Owens had failed to exhaust his administrative remedies by not filing a standard grievance after losing the appeal of his emergency grievance. (No other defendants argued failure to exhaust.) Second, Ulrey obtained dismissal based on the expiration of the statute of limitations. Because Owens did not know her name at the outset, the court permitted discovery to obtain her identity and set a deadline for Owens to amend his complaint. After that deadline passed without an amendment, Owens pointed to the unanswered discovery seeking the nurse's name. The defendants then identified Ulrey as the nurse, and a week later in November 2018 Owens amended his complaint naming Ulrey. Ulrey moved to dismiss, arguing that, because the two-year limitations period began, at the latest, in February 2016 (when Owens received a wheelchair), the amendment was untimely by over eight months. The district court agreed, rejecting Owens's arguments that the relation-back doctrine under Federal Rule of Civil Procedure 15(c) or tolling made his complaint timely. Finally, the prison lieutenant and warden successfully moved for summary judgment on the ground (as relevant on appeal) that non-medical personnel can reasonably defer to the judgment of medical professionals.

Analysis

On appeal, Owens argues that he sufficiently pleaded his claim, dismissed at screening, that Dr. Coe and the lieutenant violated his Eighth Amendment rights by depriving him of adequate food. Our review is de novo and we draw all reasonable inferences in Owens's favor. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020). To proceed, Owens must allege that a defendant deprived him of "the minimal civilized measure of life's necessities," knowing of and disregarding the risk of harm from that

deprivation. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citation omitted). Depending on the "amount and duration of the deprivation," denying a prisoner adequate nutrition can violate the prisoner's Eighth Amendment rights. *Reed v. McBride*, 178 F.3d 849, 853 (7th Cir. 1999) (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)).

Owens adequately stated a claim that, by refusing to provide him with a wheelchair for months, Dr. Coe knew that he was denying Owens adequate nutrition. In early November, Owens allegedly twice told Dr. Coe that without a wheelchair he could not get to the meal hall, and he ended up missing 11 meals in as many days. Owens plausibly alleged that Dr. Coe knowingly deprived him of adequate nutrition. *See id.* at 853–54 (missing some meals for 3-to-5 days when weakened)*; Hutto v. Finney*, 437 U.S. 678, 686–87 (1978) (diet of less than 1,000 calories a day "might be tolerable for a few days and intolerably cruel for weeks"). By contrast, the allegations do not state a claim against the lieutenant, who allegedly knew only that Owens missed one meal. *See Reed*, 178 F.3d at 853. We thus reinstate the claim against Dr. Coe.

We next turn to Owens's claim, dismissed for failure to exhaust, that Dr. Coe knowingly kept him in pain. To sue prison officials under § 1983, a prisoner must exhaust all available administrative remedies. 42 U.S.C. § 1997e(a). Owens correctly contends that, under *Williams v. Wexford Health Sources, Inc.*, 957 F.3d 828 (7th Cir. 2020)—which the appellees do not discuss—his "emergency" grievance exhausted his available remedies. Owens submitted his grievance in 2016, before the prison changed its grievance procedure in 2017, *see* 20 Ill. Admin Code § 504.840, and *Williams* lays out the analysis we apply to pre-2017 grievances. In *Williams*, as here, the Board rejected a prisoner's appeal of a warden's decision that a grievance was not an "emergency" and told the prisoner to comply with the rules of the "standard" procedure by submitting "responses from his counselor, the Grievance Officer, and the [warden]." *Id*. at 831. We held that the grievance rules in force in 2016 did not "say that an inmate who invoked the emergency process in a non-frivolous way had to start all over again with the standard procedure whenever the warden concluded that no emergency existed." *Id.* at 833. The same thing happened here; Owens invoked the emergency grievance process in a non-frivolous manner. Dr. Coe does not contend that Owens frivolously called his grievance an "emergency." Thus, under *Williams*, Owens exhausted his available "emergency" remedies, and this claim may proceed.

We now turn to the remaining issues, which the district court correctly resolved. Owens contends that the court should not have dismissed his Eighth Amendment claim against Nurse Ulrey on limitations grounds. For § 1983 claims, we borrow the statute of

limitations and the tolling provisions from the state in which the claim arises. *Ray v. Maher*, 662 F.3d 770, 772 (7th Cir. 2011). In Illinois, the statute is two years, *id.* at 773; thus he had two years from February 2016 (when he received his wheelchair and thus the latest date that his claim accrued). But he did not file his amended complaint naming her until eight months after the two-year deadline. His ignorance of her name before then does not entitle him to the benefit of the relation-back doctrine of Rule 15(c). *See Herrera v. Cleveland*, 8 F.4th 493, 499 (7th Cir. 2021) (substituting a named defendant for pseudonymous one is not a "mistake" that justifies relation back).

Owens offers two responses, but neither one persuades us. First, he argues that his accrual date was actually January 9, 2018, when he was transferred to another prison. But the complaint does not suggest that Ulrey did anything wrong after Owens received a wheelchair in February 2016. Second, Owens maintains that the court should have equitably tolled the limitations period. But the district court acted within its discretion in declining to do so: It reasonably found that, because he missed the court's deadline to amend his complaint, he was not diligent. *See Rosado v. Gonzalez*, 832 F.3d 714, 717 (7th Cir. 2016). Owens defends his tardiness by accusing the defendants of not timely answering his discovery requests. But Owens could have moved to compel answers, and he did not. And the defendants' "mere silence" about Ulrey's name was not the type of fraudulent concealment that might otherwise require tolling. *See Gredell v. Wyeth Labs Inc.*, 803 N.E.2d 541, 548 (Ill. App. 2004).

Owens next argues that he should have survived summary judgment on his claim that the prison lieutenant deliberately denied him treatment for his pain. But as a layperson, the lieutenant could reasonably defer to the judgment of medical personnel, as he did. *Eagan v. Dempsey*, 987 F.3d 667, 694 (7th Cir. 2021). Moreover, his actions reflect concern for Owens, not deliberate indifference to his needs: He alerted the health unit of Owens's pain, learned that Owens received some care, and, after seeing that Owens still had trouble walking, got Owens a wheelchair to help him leave the unit without added discomfort. These acts of attentiveness are compatible with the Eighth Amendment.

We end by addressing two final issues. First, Owens argues that the district court should have recruited counsel for him. His appellate arguments focus mainly on difficulties in his case that developed *after* he sought counsel. But our review is limited to the facts before the court at the time of the motion. *See Pruitt v. Mote*, 503 F.3d 647, 659 (7th Cir. 2007) (en banc). And the district court adequately reasoned that, based on Owens's filings and his participation in discovery, he could meet the demands of the

case at that stage in the suit. *See id.* at 655. Second, Owens accuses the district court of bias against him. But he supports this claim by pointing only to rulings against him, and adverse rulings alone do not show bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

We thus VACATE the pleadings-based dismissal of the Eighth Amendment claim that Dr. Coe denied Owens adequate nutrition and REMAND the claim for further proceedings. On remand Dr. Coe may raise, and the district court may resolve, any appropriate defenses to this claim. We also VACATE the summary judgment (for lack of exhaustion) on the Eighth Amendment claim that Dr. Coe did not adequately treat Owens's pain and REMAND it for further proceedings. We AFFIRM in all other respects.