NONPRECEDENTIAL DISPOSITION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 January 19, 2023*
Decided January 23, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1145

JAYVON FLEMMING,
Plaintiff-Appellant,

v.

MCKENIN HAUCK and THEODORE ANDERSON,
Defendants-Appellees.

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

No. 20-cv-634-jdp

James D. Peterson,
Chief Judge.

O R D E R

Jayvon Flemming, a Wisconsin inmate, sued two staff members at Columbia Correctional Institution, located in Portage, Wisconsin, alleging that they violated his rights under the Eighth Amendment by failing to stop him from harming himself. The district court entered summary judgment for the defendants. It correctly ruled that no

* 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).

reasonable jury could find that the defendants knew that Flemming might harm himself, or that they took inadequate measures to prevent that harm; thus, we affirm.

We review the evidence in the light most favorable to Flemming. *See Lord v. Beahm*, 952 F.3d 902, 903 (7th Cir. 2020). At Columbia, Flemming often threatens to harm himself. He states that he "uses self-harm as a means to get what he wants." The events of this suit occurred in May 2019, when he threatened self-harm. Because of his history of threats (including one that led to serious injury), medical staff placed Flemming on "observation status." In this status, inmates who psychological staff fear may injure themselves are moved to a separate unit, observed every 15 minutes by security or unit staff, and kept from their property. While in this status, Flemming obtained a staple and threatened to cut himself with it, but he relinquished it upon request to a staff member.

The next day, McKenin Hauck, a prison psychologist, concluded that Flemming was no longer a danger to himself. She explained in her notes that he no longer reported thoughts or acts of self-harm; the unit's records showed that Flemming was eating, sleeping, singing, and socializing; and Flemming displayed self-control when he voluntarily relinquished the staple to staff. (Flemming asserts—and we accept—that Hauck never personally met with him; he does not, however, dispute the facts that she reported in her notes). Hauck recommended that he move out of observation status.

An officer, Theodore Anderson, helped move Flemming from observation status to "controlled status," a place for inmates who, like Flemming, have been disruptive. Security officers, not psychological staff, determine if an inmate should go to controlled status. Upon entry to controlled status, inmates are strip searched, kept from their property (as in observation), and assessed every 30 minutes. On his way to controlled status, Flemming told Anderson that he was coming from observation status, felt suicidal, had a history of harming himself, and wanted to return to the observation unit. He shouted, "I'm letting you know right now I'm going to engage in self-harm." Anderson notified the psychological services unit about Flemming's threat and sought advice. The on-call doctor contacted Hauck for her assessment. She recommended against returning Flemming to observation because she believed this threat to be insincere. Upon Flemming's entry to controlled status, his strip search revealed no hidden objects.

About two hours later, Flemming cut a four-inch gash in his arm with a piece of a paper clip and inserted it into the wound. Security staff notified the psychological staff, and Flemming was transported to an outside hospital. During this time, he remained calm and cooperative. After receiving treatment, Flemming returned to

Columbia, and security staff told Hauck that he was in good spirits, cooperative, and denied any thoughts of self-harm. Based on this report, Hauck advised security staff that Flemming did not need to return to the observation unit.

In this suit, as relevant on appeal, Flemming accuses Hauck and Anderson of violating his Eighth Amendment rights by deliberately disregarding a risk that he would severely harm himself in controlled status. *See* 42 U.S.C. § 1983. The district court ruled that even under Flemming's version of the facts, no reasonable jury could find that either defendant knew that Flemming was in danger of self-harm there, or that they failed to take adequate measures to prevent harm. Flemming, the court said, admits that he sometimes used threats of self-harm to manipulate staff, and Flemming did not offer evidence to refute the reasonableness of the defendants' beliefs that his threats in May 2019 were insincere. Further, even if the defendants had reason to believe his threats to be genuine, the controlled-status unit reasonably monitored his safety.

On appeal, Flemming argues that he presented sufficient evidence for a trial against both defendants. First, he disputes that Hauck saw him while he was in observations status, and, he continues, she recklessly allowed him to leave that status without conducting an in-person assessment. Second, he contends that Anderson recklessly put him on controlled status given his history of self-harm and his failure to use a metal detector to search him for potentially dangerous items.

To survive summary judgment on his Eighth Amendment claim, Flemming must supply evidence from which a jury could find that the defendants deliberately disregarded a known, objectively serious risk of harm to his health. *See Farmer v. Brennan*, 511 U.S. 825, 844–45 (1994); *Wilson v. Adams*, 901 F.3d 816, 820 (7th Cir. 2018). When the serious risk at issue is attempted suicide, defendants may be culpable if they "(1) subjectively knew the prisoner was at substantial risk of committing suicide and (2) intentionally disregarded the risk." *Lisle v. Welborn*, 933 F.3d 705, 716–17 (7th Cir. 2019) (quoting *Collins v. Seeman*, 462 F.3d 757, 761 (7th Cir. 2006)).

The district court correctly granted summary judgment to the defendants because Flemming did not present triable evidence of either point. We first turn to Hauck. We accept for purposes of this appeal Flemming's assertion that Hauck never spoke to him while he was in observation status. Even so, based on undisputed facts, no reasonable jury could find that Hauck knew (or recklessly ignored) that Flemming was in imminent danger if he left observation status. Hauck knew that Flemming had just relinquished an item with which he could have severely hurt himself; the unit's logs stated that he was eating, socializing, sleeping, and not threatening self-harm; and, as

Flemming admits, he often threatened self-harm just to manipulate staff. By relying on these facts, her assessment that he was not in danger was based on professional judgment, and we afford it deference unless "no minimally competent professional would have so responded under [the] circumstances at issue." *See McGee v. Adams*, 721 F.3d 474, 481 (7th Cir. 2013) (internal citations omitted). Here, Flemming did not offer any evidence that this judgment substantially departed from accepted professional standards. Thus, a reasonable jury could not find that Hauck intentionally disregarded a known, substantial risk of harm. *See id.*

The same conclusion applies to Anderson. When Flemming threatened self-harm during his transfer to controlled status, Anderson responded reasonably. Because he had no authority to return Flemming to observation status, he sensibly contacted those who could—the psychological staff. And as a non-medical officer, he could rely on the judgment of that staff. *Id*. at 483. Further, even if Anderson had reason to ignore their judgment, no jury could find that he recklessly endangered Flemming by moving him to controlled status. That status keeps inmates reasonably safe because they are strip searched for dangerous objects, removed from property that they might use for self-harm, and monitored every 30 minutes. It may be true, as Flemming asserts (for the first time on appeal), that if Anderson had used a metal detector to search him, he may have found the item that Flemming used to cut himself. Nonetheless, Anderson is not liable under the Eighth Amendment because he responded reasonably to the risk of harm, even if the harm was not avoided. *See Farmer*, 511 U.S. at 844; *Lord*, 952 F.3d at 904.

AFFIRMED