NONPRECEDENTIAL DISPOSITION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 September 11, 2023*
Decided September 12, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1419

LOGAN DYJAK,
Plaintiff-Appellant,

v.

JOSEPH HARPER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 3:18-CV-1011-MAB

Mark A. Beatty,
Magistrate Judge.

O R D E R

Logan Dyjak[1] sued several employees of Chester Mental Health Center, a high-security forensic mental health facility in Illinois for those committed by a court order

* 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).

[1] Dyjak uses they/them/their pronouns in the filings in this case, and we follow suit as we have in Dyjak's previous appeals (*Dyjak v. Wilkerson*, Nos. 21-2012 & 21-2119).

(continued)

or deemed an escape risk. Dyjak alleged that the medical care, nutrition, and other conditions of confinement were constitutionally inadequate, and further that the facility denied access to personal property without due process. *See* 42 U.S.C. § 1983. The district court entered summary judgment for the defendants after determining that Dyjak failed to produce sufficient evidence from which a reasonable jury could find any defendant liable. We affirm.

We recount the undisputed facts in the light most favorable to Dyjak as the non-moving party and draw reasonable inferences in their favor. *Lane v. Williams*, 689 F.3d 879, 881 (7th Cir. 2012). Dyjak, who was involuntarily committed in 2013, was transferred to the Chester Mental Health Center in February 2018 and remained there for about six months. The defendants—Joseph Harper, Gregg Scott, Shirley Forcum, Laurie Irose, and Bree Barnett—worked at Chester during the relevant period. Harper was the Hospital Administrator until May 2018, when Scott replaced him. Forcum, a licensed clinical social worker, was the Unit Director who oversaw the daily activities in Dyjak's living quarters. Irose, who was the Human Rights Chairperson, received and reviewed patients' formal complaints. And Barnett—a Licensed Practical Nurse—assessed patients, delivered prescriptions, and assisted the doctors.

While at Chester, Dyjak raised numerous concerns about the living conditions. First, Dyjak submitted several complaints about the 24-hour lighting in their room, which Dyjak said exacerbated their mental illness and inhibited their sleep. They later testified that the lighting caused "serious emotional distress" and that it was impossible to tell whether it was day or night without checking the window. Irose responded to Dyjak's complaints, explaining that she consulted with the Chief of Security, who stated the constant lighting was necessary because it permitted staff to monitor patients every

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We note that, despite the potential for some confusion about number, this usage of "they/them/their" has been accepted by numerous style guides and dictionaries as appropriate in referring to a singular person of unknown or non-binary gender. *See, e.g.*, MLA Handbook § 3.5 (9th ed. 2021); APA Publication Manual § 4.18 (7th ed. 2020); The Associated Press Stylebook, *they, them, their* (55th ed. 2020); Farhad Manjoo, Opinion, *It's Time for 'They'*, N.Y. TIMES (July 10, 2019), https://www.nytimes.com/2019/07/10/opinion/pronoun-they-gender.html (noting that the Times stylebook allows the usage); The Chicago Manual of Style ¶ 5.48 (17th ed. 2017). We see no reason to break with our normal practice of using the pronouns adopted by the person before us, *e.g.*, *Balsewicz v. Pawlyk*, 963 F.3d 650 (7th Cir. 2020), as the Supreme Court did in *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

fifteen minutes. She also relayed that at night, the lights are dimmed as much as possible while still maintaining safety and security.

Second, Dyjak filed complaints reporting that their room was excessively cold and that they lacked adequate blankets and bedding. Dyjak testified that they believed that the temperature in their room was below 55 degrees Fahrenheit; consequently, Dyjak was often shivering and forced to layer clothes and hide extra blankets to keep warm. In response to Dyjak's complaints, Forcum encouraged Dyjak to request more blankets—something the institution permits when enough are available. She also assured Dyjak that she would address the issue at staff meetings and inform aides on all shifts to comply with a request for more blankets.

Third, Dyjak insisted that they lacked enough clothing, and that the laundry was unreliable. They said that, as a result, they often had to wear unclean clothes. Forcum responded that she consulted with the office coordinator about laundry turnaround times and expressed her hope to hire more staff to resolve any delays. Forcum later testified that laundry was typically returned the day after it was collected unless the facility was short-staffed; Dyjak experienced much longer turnaround times. But after working with the building manager, Dyjak received more clothing.

Fourth, Dyjak stated in several complaints that they received inadequate dental hygiene products. They reported that they were not given floss when needed and that the state-issued toothbrushes were inadequate. The first time Dyjak asked for floss, Irose responded that the supply was low and more had been ordered. In the meantime, she recommended that Dyjak see the dental hygienist. According to Dyjak's health records, Dyjak requested and received floss on several later occasions. Regarding the toothbrush, Irose and Forcum told Dyjak that this product was mandatory for everyone's safety because patients had recently used other toothbrushes as weapons.

Finally, Dyjak argued that they were subjected to excessive noise because other patients used personal radios at all hours. Dyjak testified that ear plugs were not permitted to mitigate the disturbance and that their efforts to get patients restricted from playing the radios were unsuccessful. Forcum confirmed that patients could not use ear plugs for safety reasons but that patients were encouraged to turn off radios by 10:30 p.m., though there was no official policy or enforcement measures.

Dyjak also submitted complaints about the medical care and diet at Chester. Dyjak testified that their diet was improperly changed and did not provide enough calories, and that their prescription medications were improperly discontinued when they arrived at Chester. These problems resulted in rapid weight loss, hypertension, and other health problems. In a response form, Irose explained that each state mental

health facility has its own doctors and dieticians who have the authority to treat patients using their own judgment. She noted that the Chester dietician prescribed a diet based on Dyjak's weight and body-mass index and accommodated Dyjak's requests for double portions after Dyjak reported weight loss. Irose also explained that Dyjak was prescribed the proper dosage of their medications: Dyjak's medical records document their receipt of the requested medications (tretinoin, benzoyl peroxide, Vaseline, fish oil, and thymine supplements). Barnett testified that she was in charge of filling prescriptions and had passed on Dyjak's concerns to the doctors. But Dyjak testified that Barnett inconsistently dispensed the medications and was often hostile.

Dyjak's last category of complaints concerned personal property. They filed multiple complaints about the deprivation of possessions (including hats, glasses, clothing, ear plugs, and an MP3 player) that they said they had been allowed to possess at their prior facility. Dyjak complained that the defendants arbitrarily denied access to personal property and that the rationales provided were inconsistent with Chester's written policies and state law. In response, Irose consulted with Dyjak's assigned therapist, who explained that she had given a list of the requested items to the Chief of Security, who cited safety reasons for preventing Dyjak from having the items in the room. Irose recommended that Dyjak keep working with the therapist to communicate requests for access to any other property.

Dyjak sued the defendants over all the problems at Chester, and soon after, the district court recruited counsel. In the operative complaint under 42 U.S.C. § 1983, Dyjak asserted that (1) Harper, Scott, Irose, and Forcum subjected them to conditions of confinement that violated the Eighth Amendment; (2) Harper, Scott, and Barnett provided inadequate medical care and food in violation of the Eighth Amendment; and (3) Harper and Scott deprived them of personal property in violation of the Fourteenth Amendment.

After discovery, the defendants moved for summary judgment, and a magistrate judge (presiding by consent, *see* 28 U.S.C. § 636(c)) granted the motion. The court first explained that, as a civil detainee, Dyjak's constitutional claims about their conditions of confinement, medical care, and nutrition arose under the Fourteenth Amendment, not the Eighth Amendment. *See Davis v. Wessel*, 792 F.3d 793, 799 (7th Cir. 2015). As a result, Dyjak needed sufficient evidence from which a reasonable jury could find that they suffered an objectively serious threat; that the defendants acted purposefully, knowingly, or recklessly; and that the defendants' actions were objectively unreasonable. *See Kinglsey v. Hendrickson*, 576 U.S. 389, 396–97 (2015); *Miranda v. County of Lake*, 900 F.3d 335, 353–54 (7th Cir. 2018).

Applying this standard, the court concluded that Harper and Scott were entitled to summary judgment on the claims involving the 24-hour lighting, cold temperatures, and inadequate clothing because Dyjak provided no evidence that Harper and Scott knew about Dyjak's complaints or were responsible for the conditions. Although Dyjak testified that they had written Harper and Scott about the conditions, Dyjak lacked evidence about when they sent the letters, what information they provided, and whether Harper and Scott had received any letters. Meanwhile, Harper and Scott testified that they did not review Dyjak's written complaints and did not recall receiving—from Dyjak or other patients—complaints about the lighting, temperature, or clothing. The district court concluded that Irose and Forcum also were entitled to summary judgment on these claims because no reasonable jury could find that their responses to Dyjak's complaints were objectively unreasonable. The court then dispensed with Dyjak's arguments about the dental hygiene products and excessive noise, determining that Dyjak had not presented sufficient evidence that these conditions were objectively serious threats to their health.

With respect to Dyjak's claims of inadequate medical care and diet, the court again pointed to the absence of evidence that Harper and Scott knew of Dyjak's complaints, and, regardless, Harper and Scott were entitled to rely on the judgment of the medical staff. Dyjak also failed to produce evidence that Barnett, the nurse, was objectively unreasonable because she could not prescribe medications or diet changes.

Finally, the court determined that no reasonable jury could find in Dyjak's favor on the claim about their property. It noted a "dearth of evidence" and pointed out that Dyjak's opposition to the summary judgment motion failed to discuss what personal items they were unable to access, what staff members denied the access, or what state or facility policies were at issue when complaining about uneven application.

Dyjak now appeals, pro se, and we review the summary judgment decision de novo, *Lane*, 689 F.3d at 881. First, Dyjak argues that the district court should have evaluated their conditions-of-confinement claims under the professional judgment standard in *Youngberg v. Romero*, 457 U.S. 307 (1982). In *Youngberg*, the Court explained that the Constitution requires the exercise of professional judgment when providing mental health treatment to someone who is involuntarily committed. *See id.* at 321–22. Dyjak interprets this to mean that all aspects of civil confinement must meet this standard and argues the defendants did not demonstrate that they used professional judgment regarding the lighting, temperature, dental products, and noise.

But Dyjak's reliance on the professional judgment standard of *Youngberg* is inapt. As we have previously explained, *Youngberg* does not require professional judgment to

dictate every aspect of civil commitment—just decisions about mental health treatment. *See, e.g.*, *Lane*, 689 F.3d at 882–83. Thus, the district court was not required to consider whether the defendants exercised professional judgment about every subject of Dyjak's complaints. The court appropriately asked whether the evidence showed that the defendants' actions were objectively reasonable. *See Kingsley*, 576 U.S. at 396–97.

Dyjak next contends that a reasonable jury could find that the defendants acted objectively unreasonably because the defendants did not show—or try to show— a legitimate government interest for the conditions of their confinement. Instead, Dyjak continues, the defendants' summary judgment filings wrongly relied on the Eighth Amendment standard of cruel and unusual punishment. (Dyjak does not mention that their own briefing did the same.)

The magistrate judge, however, applied the appropriate legal standard and determined that Dyjak failed to create a genuine issue of material fact on the reasonableness of the defendants' actions. The court explained that Irose or Forcum responded to each of Dyjak's written complaints about the room lighting, temperature, and laundry. Both spoke with other staff when necessary (checking with the Chief of Security about lighting, instructing aides to provide more blankets, and discussing laundry staffing at meetings). And both explained to Dyjak the institutional concerns in tension with Dyjak's complaints (that the lighting was required for safety and security) or offered Dyjak solutions (suggesting Dyjak request more blankets or clothing and keep working with the therapist). Dyjak simply did not produce sufficient contrary evidence that Irose's and Forcum's responses were unreasonable or not rationally related to a legitimate objective of the facility. *Kingsley*, 576 U.S. at 397–98.

Dyjak next insists that Harper and Scott turned a blind eye to constitutional violations (the conditions of confinement, medical care, and nutrition) and were personally involved because they have final authority over the facility's operations. But the court properly entered summary judgment for Scott and Harper on all claims. There is no evidence that Scott or Harper personally created or knew of the conditions affecting Dyjak, so these defendants could not be liable under § 1983. *See Kemp v. Fulton County*, 27 F.4th 491, 497–98 (7th Cir. 2022). Nor could they be liable as supervisors solely for the actions of their subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

Finally, Dyjak argues that the property claim was premised on substantive, not procedural, rights under the Fourteenth Amendment. But at summary judgment, Dyjak merely asserted a vague "claim for property deprived at CMHC." Dyjak has waived their claim; they cannot raise a substantive due process argument now when they failed to develop it in the district court. *See Bradley v. Village of University Park*, 59 F.4th 887, 897

(7th Cir. 2023). Regardless, to the extent that Dyjak argues that Chester's staff acted inconsistently with institutional policy or violated state law, Dyjak's claim cannot prevail. Although the Due Process Clause may, as a matter of federal law, require procedures when state law or regulations define substantive rights, the Fourteenth Amendment does not treat state procedural requirements or institutional policies as property interests in and of themselves. *Bell v. McAdory*, 820 F.3d 880, 884 (7th Cir. 2016); s*ee also Sandin v. Conner*, 515 U.S. 472, 487 (1995).

We have considered Dyjak's remaining arguments, and they are either undeveloped, *see* FED. R. APP. P. 28, or without merit.

AFFIRMED