

**NONPRECEDENTIAL DISPOSITION**  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 June 30, 2023\*  
Decided June 30, 2023

*Before*

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1574

JAMIE LASTOVICH,  
*Plaintiff-Appellant,*

*v.*

DEBRA KNISBECK and TAMRA  
WOLLIN,  
*Defendants-Appellees.*

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

No. 20-CV-886

Stephen C. Dries,  
*Magistrate Judge.*

**ORDER**

When Jamie Lastovich, a Wisconsin prisoner, complained of difficulty breathing and a possible lung infection, prison nursing staff examined him, administered breathing treatment, and had his blood tested for an infection. Lastovich was

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\* 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).

dissatisfied with the care that he received and sued the staff for deliberate indifference to his medical needs. The district court accepted the defendants' unopposed statement of facts and entered summary judgment for them. Because the court permissibly accepted the defendants' version of the facts and correctly determined that no reasonable jury could find any defendant deliberately indifferent on those facts, we affirm the judgment.

Because the district court accepted the defendants' proposed facts as undisputed, we recount the facts accordingly, still viewing them in the light most favorable to Lastovich. *McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 786–87 (7th Cir. 2019).

Lastovich's concern about his lungs began almost immediately upon arriving at Dodge County Detention Facility. During an initial health screening, he told nurse Tamra Wollin that he might have bronchitis. Several weeks later, Lastovich suspected that he had developed pneumonia and submitted a healthcare request. He was examined by Nurse Practitioner Debra Knisbeck, who noted his complaints of shortness of breath and a cough, but also his overall improvement. After ensuring that he was not wheezing or making other abnormal sounds, she administered a nebulizer breathing treatment to help his cough. She then took a blood sample to check for an infection, and the results came back normal. She decided against prescribing antibiotics and told Lastovich to follow up as needed.

Weeks later, Lastovich submitted another request for care over breathing difficulties and he again mentioned a concern about pneumonia. But two days later, he reported that he no longer wished to be seen because he felt better.

Lastovich sued the two nurses under 42 U.S.C. § 1983, asserting that they violated his Eighth Amendment rights when they were deliberately indifferent to his medical needs. The district judge provided Lastovich with a handout answering pro se litigants' common questions for litigating in federal court. Later, a magistrate judge, presiding by consent under 28 U.S.C. § 636(c), provided him with copies of the relevant local and federal rules.

As the case proceeded to discovery, Lastovich repeatedly asked the court to recruit counsel to assist him. The court denied these motions, explaining that Lastovich had shown that he was able to litigate his case and did not need legal training to participate in discovery or respond to a motion for summary judgment.

Defendants moved for summary judgment, supported by their undisputed facts showing that Lastovich received constitutionally adequate care. They also tendered, consistent with *Timms v. Frank*, 953 F.2d 281, 285 (7th Cir. 1992), the relevant local and federal rules that explained the procedures for Lastovich to respond and the consequences for not doing so. The court then warned Lastovich that it would accept the defendants' facts as undisputed if he failed to respond to the summary judgment motion with supporting evidence. Lastovich again asked the court to recruit counsel, moved to compel production of evidence, and sought an extension of time to respond to the defendants' motion. The court declined to recruit counsel for the same reasons previously given. As for his request for evidence, the court ruled that discovery had closed but could be reopened if Lastovich needed certain evidence to respond to the defendants' motion. The court extended the deadline for Lastovich's response.

Before that deadline, Lastovich submitted a four-page letter to "let the court know some more facts in response to the [defendants'] motion for summary judgment." He asserted, for instance, that he told nursing staff that he felt unwell, that they did not treat him, and that he was purchasing and taking acetaminophen. The court construed this letter as Lastovich's response to the defendants' motion.

Several weeks later, Lastovich moved again both to have counsel recruited on his behalf and to compel production of evidence.

The court resolved the pending motions and entered summary judgment for the defendants. First, the court denied the motion to compel, noting that Lastovich did not move to reopen discovery despite having been instructed how to do so, and in any event, he failed to make a good faith attempt to confer with the defendants about his discovery requests, as required under Rule 37 of the Federal Rules of Civil Procedure. Second, the court explained that Lastovich failed under Local Rule 56(b)(2) to oppose the defendants' summary judgment motion, including their proposed findings of fact, by submitting or citing evidence, or even substantively responding to the defendants' arguments. Based on the defendants' unopposed version of the facts, the court concluded that Knisbeck and Wollin demonstrated that they provided all the care required under the Eighth Amendment. Specifically, nursing staff thoroughly examined and sufficiently treated Lastovich when he first asked to be seen for respiratory symptoms. And Lastovich's cancellation of his second request to be seen left them no reason to believe that he was still in danger.

Lastovich then submitted to the district court several post-judgment filings, including certain medical records that, he maintains, show that he was treated for sepsis and other serious conditions within 24 hours of his release from prison.

On appeal, Lastovich primarily insists that these medical records demonstrate the defendants' deliberate indifference to his lung condition. But a party may not introduce new evidence that could and should have been presented to the district court before judgment, *Barrington Music Prods., Inc. v. Music & Arts Ctr.*, 924 F.3d 966, 968 (7th Cir. 2019), and Lastovich does not justify his delay. At the time of judgment, the court had only Lastovich's four-page letter as a response, which the court permissibly deemed deficient under Local Rule 56(b)(2) because it included only a vague narrative of his claims, without citation to competent evidence.

Next, without engaging the district court's decision to accept the defendants' version of the facts, Lastovich generally contests the court's conclusion that the two nurses provided sufficient medical care. He argues that they should have tested his mucus and taken an x-ray of his chest to diagnose his symptoms and rule out a lung infection. But the "high bar" of deliberate indifference requires showing "something approaching a total unconcern for the prisoner's welfare in the face of serious risks," *Rasho v. Jeffreys*, 22 F.4th 703, 710 (7th Cir. 2022) (citation omitted), and Lastovich provided no such evidence. The defendants presented evidence that Knisbeck responded to Lastovich's request for care by providing breathing treatment and a blood test that yielded normal results, and that Lastovich soon felt better and declined to be seen again.

Finally, Lastovich raises several contentions related to the court's management of his case. He argues, for instance, that the defendants' failure to produce evidence during discovery prevented him from adequately responding to their proposed facts. But he does not engage with the district court's ruling that he failed to confer with the defendants in good faith. *See* FED. R. CIV. P. 37(a)(1). Lastovich also challenges the court's denials of his requests for counsel, but his claims were too weak to "warrant marshaling scarce legal and expert resources toward his case." *Watts v. Kidman*, 42 F.4th 755, 767 (7th Cir. 2022).

AFFIRMED