NONPRECEDENTIAL DISPOSITION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 March 28, 2023*
Decided April 3, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-1675

JAMES MUNSON,
Plaintiff-Appellant,

v.

FAIYAZ AHMED and WEXFORD HEALTH SOURCES, INC.,
Defendants-Appellees.

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

No. 18-cv-2216-DWD

David W. Dugan,
Judge.

O R D E R

James Munson, an Illinois prisoner, sued prison doctor Faiyaz Ahmed and Wexford Health Sources, Inc. under 42 U.S.C. § 1983 for violating his rights under the

* 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).

Eighth Amendment with respect to the treatment of two medical conditions.[1] He asserted that Dr. Ahmed demonstrated deliberate indifference to chronic pain in his knee, neck, and back by failing to order pain medication or an MRI, and deliberately inflicted pain by conducting a biopsy on his testicle without using anesthesia. He further alleged that Dr. Ahmed's failure to order an MRI resulted from Wexford's fiscal policies. The district judge entered summary judgment for the defendants, concluding that Dr. Ahmed exercised his professional medical judgment and that Munson did not establish that any Wexford policy caused the doctor's decisions. We affirm.

We recite the facts in the light most favorable to Munson, noting disputes where relevant. *Miles v. Anton*, 42 F.4th 777, 780 (7th Cir. 2022). Munson experiences chronic pain in his hip and knee, foot, and low back (from being hit by a car as a boy, a chemical burn, and degenerative disease, respectively). While housed at Lawrence Correctional Center in Sumner, Illinois, Munson saw medical professionals for his pain dozens of times from 2017 to 2019. In this time, he was prescribed many different medications, including muscle relaxers, nerve-pain blockers, non-narcotic pain relievers, and, eventually, an opioid. Roughly a dozen of Munson's appointments were with Dr. Ahmed, who personally changed his prescriptions for pain medication four times. Dr. Ahmed also issued a knee sleeve and low-bunk permit to Munson and ordered topical muscle rubs, myofascial release therapy (a form of therapeutic massage), stretching exercises, physical therapy, and X-rays. But Munson's pain persisted.

Munson had four visits with Dr. Ahmed from May to July 2018, at which he asked for a change of pain medication. Throughout this time, he had a new prescription for naproxen, a nonsteroid anti-inflammatory drug, from another provider. Dr. Ahmed refused to alter Munson's medication, instead comparing Munson's pain with his own and telling Munson that he was "just getting old," "[t]here's nothing wrong," and he could "deal with the pain." In response to requests for better pain medication, the doctor told Munson that "[m]edication mess[es] with your heart, brain, and liver." Eventually, he offered to prescribe Tylenol, but Munson refused because he did not believe it would work. Dr. Ahmed did nothing else but examine Munson, help him with stretches, and, once, provide myofascial release therapy.

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[1] The district judge joined the warden of Lawrence Correctional Center as a defendant in case injunctive relief was ordered. We granted the warden's motion to be dismissed on appeal because Munson's opening brief showed he did not intend to appeal the judgment for the warden.

Munson came to believe that he needed an MRI to give the doctors information about how to treat his hip and knee pain. Munson requested this scan three times from Dr. Ahmed and seven times total. Dr. Ahmed said that an MRI would not provide any more information than the X-rays had; further (according to Munson), he said at least three times that Wexford told him to not request MRIs for prisoners because of cost.

Dr. Ahmed also treated Munson for bumps on his testicles. After monitoring the condition for several weeks, Dr. Ahmed ordered an STD test and performed a biopsy. According to Munson, Dr. Ahmed told him the nurse would numb the area first. No one did, however, and Munson felt pain throughout the biopsy. He asked Dr. Ahmed to stop, but he did not. The biopsy lasted around forty-five seconds. Afterward, Munson was given silver nitrate to stop the bleeding, an antibiotic, and a band-aid. He bled from the biopsy site for several days and had to request extra bandages from a nurse.

Based on these events, Munson sued Dr. Ahmed for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. *See* 42 U.S.C. § 1983. Munson also sued Wexford under *Monell v. Dep't of Soc. Servs.*, 426 U.S. 658 (1978), alleging that it had a pattern of instructing doctors not to order MRIs because of cost, which resulted in Dr. Ahmed failing to investigate his chronic pain properly.

Several contested motions in the district court are relevant on appeal. Munson moved four times for recruited counsel, and each motion was denied. The judge denied the first two motions because Munson had not yet made reasonable efforts to find counsel, and the second two because Munson's filings showed he was competent to represent himself given the case's relative lack of complexity. During discovery, Munson moved to compel discovery about Dr. Ahmed's personal medical history to "give credence" to Munson's descriptions of conversations between the two. The judge denied the motion, ruling that Dr. Ahmed's medical history was not at issue and that Munson's request would not reasonably lead to discoverable information.

Dr. Ahmed and Wexford separately moved for summary judgment. Dr. Ahmed argued that he could not be found deliberately indifferent to Munson's pain because he prescribed several medications in response to Munson's complaints before the four visits at issue, in addition to providing other treatments during the relevant visits. Regarding his refusal to order an MRI, Dr. Ahmed attested that he did not believe this scan was medically necessary and pointed to evidence that a nurse practitioner also had told Munson that an MRI was not necessary. Finally, Dr. Ahmed swore that he did not use a numbing agent for the biopsy because he believed the injection required to administer it would be more painful than the biopsy itself (which he had anticipated

would take only one to two seconds) and because it could affect the results of the biopsy. Wexford argued that it could not be liable because Munson lacked evidence that he suffered substantial harm from not receiving an MRI, and, regardless, it did not have a practice of refusing MRIs for cost purposes alone.

Munson largely repeated his factual allegations in response. He bolstered his claim against Wexford by supplying affidavits from five other prisoners who swore that they were told Wexford would not allow MRIs because of cost. In response to Dr. Ahmed's attestation that a numbing agent could have affected the biopsy, he stated that two other medical professionals told him that Dr. Ahmed should have numbed the area and that there are numbing agents that would not affect the biopsy.

The district judge ruled for the defendants. Although he stated that a reasonable jury could find that Munson had a serious medical need, he concluded that Dr. Ahmed was entitled to deference for his treatment of Munson's pain and that Munson had no right to demand specific care. The judge determined that deference was also owed to Dr. Ahmed's professional opinion that a numbing injection was unnecessary for the biopsy because Munson provided no evidence that a numbing agent was medically necessary. As for Wexford, the judge surmised that no reasonable juror could conclude based on Munson's evidence that Wexford had a policy of rejecting MRIs based on cost. Munson appealed, challenging the entry of summary judgment as well as the denials of his motions to recruit counsel and to compel discovery.

We begin with Munson's Eighth Amendment claims, reviewing the decision to grant the summary-judgment motions de novo. *Miles*, 42 F.4th at 780. To succeed on an Eighth Amendment claim about medical treatment, Munson needed evidence of "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Deliberate indifference is "more than negligence or even malpractice," *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014); the practitioner must consciously disregard a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 839–40 (1994).

Munson cannot show that Dr. Ahmed was deliberately indifferent to his chronic pain by not altering his pain medications or by not ordering an MRI. Dr. Ahmed examined Munson at each visit, helped Munson with his exercises, and provided massage therapy. Further, before the four summer 2018 visits, which took place while Munson was starting a new prescription for naproxen, Dr. Ahmed had frequently adjusted Munson's medications in response to his ongoing complaints. Given the amount of treatment Dr. Ahmed dispensed, he could be liable only if no minimally

competent professional would have responded similarly under those circumstances, such that the treatment he provided was "blatantly inappropriate." *Pyles*, 771 F.3d at 409 (citations omitted). Otherwise, his treatment decisions are "entitled to deference" because he is a medical professional. *Id.* Nothing in the record shows that Dr. Ahmed's treatment of Munson's pain was deliberately indifferent: indeed, Dr. Ahmed explained that he used stretching and massage therapy because he was worried about the side effects of more medication. Munson's disagreement with the way that Dr. Ahmed treated his pain does not rise to a constitutional violation. *See id.* at 412.

Further, the decision whether to order a diagnostic test like an MRI is "a classic example of a matter for medical judgment," *Estelle*, 429 U.S. at 107, and the record shows that other medical professionals agreed with Dr. Ahmed that an MRI was unnecessary in Munson's case, *see Pyles*, 771 F.3d at 411. And because Munson cannot show that Dr. Ahmed violated his rights under the Eighth Amendment by refusing to order an MRI, he also cannot establish *Monell* liability for Wexford. Before Wexford could be liable for an alleged policy of discouraging MRI referrals, that policy must have produced a constitutional violation. *Dean v. Wexford Health Sources, Inc.*, 18 F.4th 214, 235 (7th Cir. 2021). Here, there was none.

Munson's deliberate-indifference claim arising from Dr. Ahmed's decision to conduct the biopsy without a numbing agent fares no better. Dr. Ahmed swore that, in his professional medical opinion, numbing the area was unnecessary because the procedure was so short and because a numbing injection could cause Munson more pain and affect the biopsy results. Even if we considered Munson's hearsay evidence—that other medical professionals told him there were other options to numb the area—he demonstrates nothing more than disagreement among providers. That is not enough to show that Dr. Ahmed was not, in fact, exercising his professional judgment. *See Petties v. Carter*, 836 F.3d 722, 729 (7th Cir. 2016) ("[E]vidence that *some* medical professionals would have chosen a different course of treatment is insufficient to make out a constitutional claim."); *see also Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996) (removing torn toenail without anesthesia was "deliberate decision by a doctor to treat a medical need in a particular manner" and therefore not deliberate indifference). And to the extent that Munson argues that Dr. Ahmed failed to ensure he had adequate aftercare, Munson provided no evidence that Dr. Ahmed was aware of his post-biopsy complaints. *See Petties*, 836 F.3d at 728.

We turn now to Munson's appeal of various interlocutory decisions, starting with the denial of his motions to recruit counsel. We review the rulings for abuse of

discretion. *Pruitt v. Mote*, 503 F.3d 647, 658 (7th Cir. 2007) (en banc). When deciding whether to recruit counsel under 28 U.S.C. § 1951(e)(1), the judge must first determine whether the plaintiff made reasonable efforts to find counsel. *Id.* at 654. Twice, the judge decided that Munson had not yet done so, and he does not argue otherwise on appeal. As for the second two motions, the judge applied the correct standard under *Pruitt*, considering whether Munson was competent to represent himself given the case's difficulty. He reasonably ruled that Munson's filings showed that he understood the law and could articulate it effectively. *Id.* at 658.

We also review the denial of his motion to compel the production of Dr. Ahmed's medical history for abuse of discretion, reversing only if an error resulted in actual and substantial prejudice. *Gonzalez v. City of Milwaukee*, 791 F.3d 709, 713 (7th Cir. 2015). Munson does not explain what is wrong with the judge's decision, *see id.* at 714, and we see no problem with the ruling that Dr. Ahmed's personal medical history was not likely to be relevant to Munson's claims, even assuming the doctor compared his health problems to Munson's. *See* FED. R. CIV. P. 26(b)(1); *Allen-Noll v. Madison Area Tech. Coll.*, 969 F.3d 343, 351 (7th Cir. 2020).

Finally, we address Munson's request for sanctions against the defendants' counsel, purportedly under Rule 11(c)(2) of the Federal Rules of Civil Procedure, for moving for summary judgment in a meritorious case. An appellate court does not impose Rule 11 sanctions. *See* FED. R. CIV. P. 1 (stating the rules govern "in the United States district courts"). In any case, moving for summary judgment is not grounds for sanctions just because the non-movant believes his claims have merit. To the extent that Munson seeks appellate sanctions, a request must be made in a separate motion—but we see no possible ground for sanctions here. *See* FED. R. APP. P. 38, *Waldon v. Wal-Mart Stores, Inc., Store No. 1655*, 943 F.3d 818, 824 (7th Cir. 2019).

AFFIRMED