

NONPRECEDENTIAL DISPOSITION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 April 28, 2023*

Decided May 5, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1847

JOSHUA LEE HOSKINS,
Plaintiff-Appellant,

v.

NATHAN CHAPMAN,
Defendant-Appellee.

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

No. 3:20-cv-00508-GCS

Gilbert C. Sison,
Magistrate Judge.

ORDER

Joshua Hoskins, an Illinois prisoner, sued a prison dentist, alleging that the dentist was deliberately indifferent to a serious medical need and retaliated against him for filing grievances. A magistrate judge, sitting by consent, *see* 28 U.S.C. § 636(c), granted the dentist's motion for summary judgment. Reviewing the facts properly before us in Hoskins's favor, we affirm.

* 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).

This suit addresses the dental treatment that Hoskins sought between June 2019 and June 2020. When Hoskins arrived at Illinois's Pinckneyville Correctional Center in June 2019, he had an unfilled cavity and was placed on the "fill list." Within a month of arriving at Pinckneyville, Hoskins began to complain (including through a grievance) about unresolved dental pain. Then, in September, he saw the prison's dentist, Dr. Nathan Chapman, about a blow to his face. Dr. Chapman ordered an X-ray, gave him a mouth guard, and saw him again a few weeks later for a follow-up appointment. About a month later, Dr. Chapman filled the cavity, identified a new cavity, and placed Hoskins on the fill list for that new cavity. When, about four months later (around March 2020, the onset of the COVID-19 pandemic), that cavity remained unfilled, Hoskins filed grievances complaining of unresolved dental issues. Dr. Chapman examined Hoskins and reported no swelling, bleeding, pus, or signs of distress. Dr. Chapman did not fill the cavity then; at that time, the prison had restrictions on dental care to reduce the spread of COVID-19. Eventually, that tooth was extracted.

Hoskins sued Dr. Chapman under the Eighth and First Amendments, *see* 42 U.S.C. § 1983, and the case ended at summary judgment. He accused the dentist of deliberate indifference to his serious medical needs and of retaliating for Hoskins's grievances by delaying filling his cavities. After Dr. Chapman moved for summary judgment, the district court gave Hoskins extended opportunities to file materials supplementing his opposition. Based on the material to which the parties directed its attention, the district court ruled that no reasonable jury could find against Dr. Chapman. It reasoned that the cavities and tooth pain were not serious and the treatment did not substantially depart from accepted medical practice; also, because Hoskins received treatment from Dr. Chapman, no jury could find that the grievances motivated Dr. Chapman to withhold other treatment. Hoskins filed a flurry of post-judgment motions, but the court denied them. In addition to rejecting Hoskins's other arguments, the court reasoned that Hoskins's "new" evidence was redundant and immaterial, and Hoskins did not explain why he failed to cite it earlier.

On appeal, Hoskins principally argues that his deposition testimony, which he did not submit to the district court and to which he never directed the district court's attention, creates factual disputes requiring a trial on both of his claims. In his deposition, Hoskins asserted that Dr. Chapman said that he (Dr. Chapman) was delaying treatment for Hoskins "because" of the grievances and was falsifying medical records to create the appearance that Hoskins did not need faster treatment. This argument is waived. Hoskins bore the burden of directing the district court to any evidence supporting his claim. *See Packer v. Trs. of Ind. Univ. Sch. of Med.*, 800 F.3d 843,

849 (7th Cir. 2015). Despite receiving extended opportunities to do so, his response to Dr. Chapman's motion for summary judgment never alerted the district court to the portions of his deposition that he now asks us to consider. Even pro se litigants "must inform the trial judge of the reasons, legal or factual, why summary judgment should not be entered." *Gruenberg v. Gempeler*, 697 F.3d 573, 581 (7th Cir. 2012) (citation omitted). Once a civil litigant has failed to raise a factual issue with the district court, the litigant may not belatedly insist that an appellate court consider it. *See Packer*, 800 F.3d at 849; *see also Scheidler v. Indiana*, 914 F.3d 535, 540 (7th Cir. 2019) ("A party generally forfeits issues and arguments raised for the first time on appeal.").

When reviewing the record properly before the district court, *see Packer*, 800 F.3d at 849, we conclude that summary judgment was correct. We begin with Hoskins's deliberate-indifference claim. For that claim to go to trial, the record must allow a reasonable jury to conclude that he faced a substantial risk of harm from a serious medical condition that Dr. Chapman ignored. *See Farmer v. Brennan*, 511 U.S. 825, 828 (1994). But even if we assume that Hoskins's dental issues were serious, Hoskins's desire to have the cavities filled faster (and the tooth's later extraction) is not evidence that Dr. Chapman knew about and ignored a serious risk of harm. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Moreover, Dr. Chapman indisputably demonstrated care for Hoskins by regularly examining him, filling one cavity, diagnosing another, and placing Hoskins on the fill list (which was interrupted by COVID-inspired restrictions that were outside of Dr. Chapman's control). The district court thus correctly ruled that no reasonable jury could find that Dr. Chapman deliberately ignored a serious medical risk.

Likewise, Hoskins's First Amendment claim fails. Hoskins must identify evidence from which a reasonable jury could conclude that his complaints were "at least a motivating factor" in Dr. Chapman's treatment decisions. *See Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009). He argues that the district court erroneously reasoned that, because his grievances did not name Dr. Chapman individually, the dentist could not be angered by them. But the district court pointed to more than the mere absence of Dr. Chapman's name from the grievances. As the district court also rightly explained, Hoskins received consistent care from the dentist; thus, no reasonable jury could find that the grievances motivated him to deny care.

Finally, Hoskins argues that the district court erred in denying his post-judgment motions. In his view, because the evidence he wished to submit was already in the record, Dr. Chapman would not be prejudiced by its submission. But if the evidence

was already in the record, then it was not “newly discovered” and thus could not satisfy the standard of Rule 60(b)(2) of the Federal Rules of Civil Procedure.

We have considered Hoskins’s other arguments, and none has merit.

AFFIRMED