NONPRECEDENTIAL DISPOSITION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 April 28, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-2514

LITTLETON E. JACKSON,
Plaintiff-Appellant,

v.

SUSAN PETERS, et al.,
Defendants-Appellees.

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

No. 20-C-1341

Lynn Adelman,
Judge.

O R D E R

When Littleton Jackson, a Wisconsin prisoner, complained about his chronic headaches, nursing staff scheduled him for medical appointments at which his pill dosage was adjusted. Dissatisfied with the speed and efficacy of their response, he sued the staff, arguing that they were deliberately indifferent to his medical needs and thus

* 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).

violated his rights under the Eighth Amendment. The district court entered summary judgment for the defendants. Because the court was correct that no reasonable jury could find any defendant deliberately indifferent, we affirm.

We present the facts from the record in the light most favorable to Jackson, the non-movant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). While at Green Bay Correctional Institution in Wisconsin, Jackson had recurring, severe headaches. He was housed in a restricted unit that did not allow him to keep his pain medication in his cell and self-medicate. Instead, prisoners had to ask their guards for their medicine at four designated times during the day. In addition, under another prison policy, patients with "urgent matters" could ask for an appointment with a nurse who "may" escalate the matter to an appointment with an advanced care provider "the same day."

From June to September 2020, Jackson complained about his headaches, seeking stronger pills and easier access to them. Three nurses responded, and nurse Rachel Matushak saw him first. Jackson told her that because of the housing unit's restriction, he could not self-medicate overnight, when the headaches could be unbearable. Matushak, who had no control over that policy, replied that Jackson would "have to suffer" at night (Matushak denies saying this). She scheduled him for follow-up appointments, including with Susan Peters, a nurse practitioner. Peters had authority to change his medication, and she prescribed acetaminophen and naproxen for him.

A second nurse, Cassandra Baier, responded to another complaint from Jackson. About a week after Jackson's visit with Matushak, Jackson filed a request explaining, "I need my pain pills stronger due to severe pain." Baier answered the next day by scheduling Jackson for a visit with Peters for 12 days later. Jackson did not attend the appointment. He says he missed it because he was in too much pain to attend, but nothing in the record suggests that anyone knew this.

The third nurse who handled Jackson's requests was Sandra Staeven. He sent three complaints about his headaches to her in one week. In answering the first, Staeven scheduled a visit with Peters for the next week and reminded Jackson that in the interim he could request a sick call. Jackson made two more requests, saying that the one-week delay was too long and he needed "stronger pain pills now." Staeven, who could not adjust Jackson's pills, referred him to her prior response. He countered with a grievance that complained about Staeven and the week delay for his appointment. Administrators told Staeven that she should have done more for Jackson but took no further action.

Jackson attended the appointment that Staeven scheduled with Peters. Peters worried that Jackson's headaches were caused by him overusing his pills. She reduced the acetaminophen, hoping that rebalancing his pills would help. She also wanted to draw blood to confirm if drug overuse was causing his pain, but he declined. Peters also referred Jackson to a dentist to see if his jaw contributed to his headaches. A doctor who saw Jackson a few months later shared Peters's concern that Jackson's pain may have stemmed from overuse of his medication and, like Peters, referred him to a dentist.

The following month, Jackson sued the three nurses and Peters, arguing that they were deliberately indifferent to his medical needs. The district court entered summary judgment for the defendants, concluding that no reasonable jury could find in Jackson's favor. (Initially Jackson sued other defendants and raised other claims, but the court did not allow those claims to proceed, and Jackson does not contest their dismissal.) Jackson unsuccessfully moved to reconsider summary judgment and now appeals.

To get past summary judgment on his claim that the defendants violated his Eighth Amendment rights, Jackson must furnish triable evidence that he had an "objectively serious medical condition" to which the defendants were "deliberately indifferent." *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016) (en banc). For the purpose of this appeal, the defendants accept that Jackson's headaches were serious. But to satisfy the subjective element of this claim, Jackson must show that the defendants actually knew of and yet disregarded an obvious risk to his health or safety. *Id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). He has not done so.

To begin, Jackson argues that the nurses violated the prison's policy under which they "may" schedule "urgent matters" with a care provider "the same day." But a violation of a prison's policy does not necessarily offend the Eighth Amendment. *See Lewis v. Richards*, 107 F.3d 549, 553 n.5 (7th Cir. 1997). In any case, the policy gives nurses discretion over scheduling urgent matters, and nothing suggests that they did not use professional judgment, to which we defer, when scheduling Jackson's care. *See Campbell v. Kallas*, 936 F.3d 536, 545 (7th Cir. 2019).

Jackson then addresses each nurse individually, beginning with Matushak. He contends that she inflicted unconstitutional harm by saying that, in light of the prison's policy barring him from self-medicating, he would "have to suffer" through his headaches at night. But he has not furnished evidence that these words alone caused him severe anguish, let alone that Matushak knew that they would. *See Lisle v. Welborn*, 933 F.3d 705, 719 (7th Cir. 2019) (observing that, to show deliberate indifference, words must have caused "psychological anguish" to a prisoner who the defendant knew had a

"psychological vulnerability" like a "suicidal" tendency). In any case, it is undisputed that Matushak could not change the prison's policy. Moreover, her actions *helped* Jackson. After he told her that his pills and their infrequent delivery were inadequate, she promptly scheduled an appointment with Peters, who (unlike her) could change his pills. Matushak's actions thus do not reflect deliberate indifference.

Next Jackson turns to Baier. He insists that she scheduled his appointment with Peters 12 days after his request in order to increase his pain. But he has supplied no evidence suggesting she had such motivations; to the contrary, the record shows that the delay was unavoidable: Jackson sought the appointment at the height of the COVID-19 pandemic, when the prison's healthcare facilities were strained. In these circumstances the delay in treatment does not imply deliberate indifference. *See Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 485–86 (7th Cir. 2022) (ruling that a two-and-a-half week wait for appointment did not reflect deliberate indifference).

Up next is Jackson's claim against Staeven. He observes that she scheduled him for an appointment with Peters a week after he requested stronger pills, and prison officials faulted her for not doing more for him after he complained about having to wait that full week. Again, a violation of prison standards is not necessarily a violation of Eighth Amendment standards. *Lewis*, 107 F.3d at 553 n.5. In any case, Jackson did not submit evidence that Staeven's decision to set his appointment for a week after his request fell outside the bounds of minimally competent professional judgment. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Without such evidence, his claim does not warrant a trial. *Id.*

Finally, Jackson contends that Peters deliberately ignored his headaches by not granting him freer access to his pills and by refusing to strengthen the dosage. This argument fails for three reasons. First, it is undisputed that Peters could not change the prison's policy forbidding prisoners in Jackson's unit from keeping drugs in their cells, and her obedience to that policy does not show deliberate indifference. *See Norfleet v. Webster*, 439 F.3d 392, 397 (7th Cir. 2006). Second, we defer to Peters's treatment decisions unless Jackson can furnish evidence that her treatment of his headaches was reckless. *See Pyles*, 771 F.3d at 409. But he has not offered evidence casting doubt on the professionalism of that treatment, which included rebalancing his pills, referring him to a dentist, offering a blood test to try to confirm the source of his pain, and addressing his possible overreliance on pills (a worry later validated by a doctor). Finally, Jackson's failure to attend one of his appointments with Peters could have given her reason to

doubt that he was in serious distress. Under these circumstances, a jury could not find that she deliberately ignored a serious medical condition. *See id.* at 412.

We have considered Jackson's other arguments, and none has merit.

AFFIRMED