

**NONPRECEDENTIAL DISPOSITION**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 6, 2024\*

Decided March 6, 2024

**Before**

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2561

JAMELL A. MURPHY,  
*Plaintiff-Appellant,*

*v.*

WEXFORD HEALTH SOURCES, INC.  
and MOHAMMED SIDDIQUI,  
*Defendants-Appellees.*

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

No. 3:19-CV-1051-MAB

Mark A. Beatty,  
*Magistrate Judge.*

**ORDER**

Jamell Murphy, an Illinois prisoner, appeals summary judgment on claims under the Eighth Amendment that Wexford Health Sources, Inc., the prison's healthcare provider, and one of its physicians deliberately ignored two masses in his body. Because the record undisputably shows that the doctor supplied care consistent with

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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).

the Eighth Amendment, and no evidence suggests that Wexford had a policy or practice to delay care, we affirm the judgment.

While incarcerated at Menard Correctional Center in Chester, Illinois, Murphy began to receive medical treatment in 2010 after he coughed up blood and occasionally had trouble breathing. A chest x-ray then showed a “prominence” that a radiologist opined could be a mass. One month later, Murphy received another chest x-ray that showed the same prominence. In a follow-up x-ray six months later, the mass appeared “slightly more prominent”; as a result, Murphy received a chest CT scan, which revealed that the prominence was a mediastinal mass (tumor between the lungs). A scan clarified that the mass was not cancerous. To investigate potential inflammation of Murphy’s esophagus, he received an upper endoscopy. This showed inflammation in his digestive-tract and the presence of *H. pylori*, a bacterium that can cause symptoms similar to those Murphy experienced. He received medication for the bacterium, which relieved some symptoms. According to Murphy, he continued to cough up blood, which the Wexford physicians attributed to an ulcer, not a mass in his chest. More chest x-rays through 2013 showed that the mass remained largely unchanged and no other abnormalities. No other medical reports appear until 2017, when Murphy complained of a stomachache and coughing up blood for which he received more medication.

In the fall of 2018, Dr. Siddiqui began to treat Murphy. At that time, Murphy was experiencing shortness of breath and chest pressure, and Dr. Siddiqui ordered a chest x-ray. Because the x-ray showed an “extra density” in Murphy’s chest—the ongoing presence of the mediastinal mass—Dr. Siddiqui ordered a CT scan and a cardiology appointment. The radiologist who performed the CT scan later that month noted the mediastinal mass and identified a second mass, a two-centimeter nodule on Murphy’s spleen, that was possibly malignant. Dr. Siddiqui sought and received approval from Wexford for a biopsy. (The records do not show if the biopsy occurred.) A few months later, Murphy underwent more testing when he was hospitalized for coughing up blood. The tests showed that the mediastinal mass had slightly decreased in size since 2011. Even so, Dr. Siddiqui sought and received approval from Wexford for a consultation with a cardiothoracic surgeon. The surgeon reported that Murphy wanted to have the mediastinal mass removed “for concerns of cancer.” The mass’s location near the phrenic nerve (which extends from the neck to the chest) prevented the surgeon from removing all of it, but testing later revealed that the mass was benign.

Once the mediastinal mass was partially removed and assessed benign, Dr. Siddiqui continued to treat Murphy for his other conditions. In the fall of 2019, the

doctor ordered a CT scan to follow up on the mass on Murphy's spleen. He also ordered a testicular ultrasound after Murphy reported testicular pain, which Murphy had mentioned intermittently since 2009. Several months later, in June 2020, Murphy again complained about coughing up blood, and Dr. Siddiqui referred him for chest and abdominal CT scans. These showed that the mediastinal mass was present but smaller because of the surgery. The scans again identified the splenic mass. An ultrasound of Murphy's spleen suggested that the mass was likely noncancerous. Dr. Siddiqui later left his employment with Wexford in July 2021.

Murphy turned to the district court after exhausting his administrative remedies. As relevant on appeal, he alleges that, in violation of his Eighth Amendment rights, Dr. Siddiqui and Wexford were deliberately indifferent to his serious medical needs by delaying over eight years necessary treatment for the masses in his chest and spleen. *See* 42 U.S.C. § 1983. The court recruited counsel for Murphy. The defendants eventually moved for summary judgment, arguing that Dr. Siddiqui was not deliberately indifferent and that no evidence suggested that a Wexford policy impaired Murphy's treatment. In response to the motion for summary judgment, Murphy admitted to all but one of the material facts asserted in the defendants' motion and did not provide a Statement of Additional Material Facts. *See* SDIL-LR 56.1(c). Murphy's counsel argued that Murphy faced objectively serious medical needs and that Wexford's policies unconstitutionally granted too much discretion to physicians, leading to "systemic deficiencies" in care. Counsel said nothing about Dr. Siddiqui.

A magistrate judge, presiding with the parties' consent, *see* 28 U.S.C. § 636(c), entered summary judgment for the defendants. The judge ruled that Murphy presented no evidence from which a jury could find that Dr. Siddiqui was deliberately indifferent. As for Wexford, the judge explained that Murphy failed to produce any evidence that Wexford had an unconstitutional policy or practice for which it could be culpable.

On appeal, Murphy (now pro se) challenges the entry of summary judgment, a decision that we review de novo, construing all facts and inferences in the light most favorable to Murphy. *See Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 678 (7th Cir. 2023). Murphy first argues that summary judgment was unwarranted because a reasonable jury could find that Dr. Siddiqui was deliberately indifferent to Murphy's serious medical need. Murphy failed to preserve this argument for appeal because he did not argue it at summary judgment. *See Soo Line R.R. Co. v. Consol. Rail Corp.*, 965 F.3d 596, 601 (7th Cir. 2020). He blames his attorney for this oversight and urges us to consider his argument now that he is pro se on appeal. Although Murphy is not

entitled to have us review his argument, in rare cases “[w]e may consider a forfeited argument if the interests of justice require it.” *S.E.C. v. Yang*, 795 F.3d 674, 679 (7th Cir. 2015) (citations omitted). We need not decide if this is such a case because, as we are about to explain, even if Murphy had preserved the argument that Dr. Siddiqui was deliberately indifferent, Murphy would still lose.

Under the Eighth Amendment, Dr. Siddiqui is entitled to summary judgment unless evidence suggests that he knew of and deliberately disregarded a substantial risk of harm to Murphy. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *White v. Woods*, 48 F.4th 853, 862 (7th Cir. 2022). Murphy argues that Dr. Siddiqui delayed care for Murphy’s medical condition “as if it was not a big deal.” Although evidence of a defendant’s deliberate and unjustified delay in providing medical care can fend off summary judgment on an Eighth Amendment claim, *see, e.g., Dobbey v. Mitchell-Lawshea*, 806 F.3d 938, 940 (7th Cir. 2015), Murphy furnished no such evidence regarding Dr. Siddiqui. He focuses primarily on the period between 2010 and 2018, but Dr. Siddiqui was uninvolved in Murphy’s care until late 2018. Dr. Siddiqui cannot be liable for any pre-2018 delays in which he did not participate. *See Stockton v. Milwaukee Cnty.*, 44 F.4th 605, 619 (7th Cir. 2022).

The undisputed evidence shows that once Dr. Siddiqui became involved in 2018, he continuously addressed Murphy’s medical needs compatibly with the Eighth Amendment. The doctor requested numerous scans, including a chest x-ray, CT scans, and a biopsy, to resolve concerns about Murphy’s shortness of breath, chest pressure, and the mass in Murphy’s chest. Even though the repeated scans showed that the mass had shrunk, the doctor also sought and received a consultation with a cardiothoracic surgeon, who removed part of the mass, later found to be benign. Dr. Siddiqui also ordered scans to assess the mass in Murphy’s spleen. He learned from the test results that this mass was likely noncancerous. (Dr. Siddiqui also addressed other issues, such as Murphy’s testicular pain.) In reply, Murphy complains about the time that elapsed between his first visit with Dr. Siddiqui in late 2018 and the appointments with specialists or the scans to assess and treat the two masses over the next two years. But no evidence suggests that Dr. Siddiqui had control over, or deliberately delayed, any appointments with outside specialists, the scans, or the other procedures.

Murphy next argues that the district court erred in entering summary judgment for Wexford. He contends that Wexford had a policy of deferring unduly to its doctors in order to delay treatment and prolong his pain. Contrary to Wexford’s assertion on appeal, Wexford could be liable for an unconstitutional policy even if its clinicians are

not individually liable for any constitutional injuries. See *Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 305 (7th Cir. 2010); *Glisson v. Ind. Dep't of Corr.*, 849 F.3d 372, 378 (7th Cir. 2017). But Murphy supplied no evidence suggesting that Wexford maintained a policy, practice, or custom of unconstitutionally delaying treatment or prolonging pain. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978); *Wilson v. Wexford Health Sources, Inc.*, 932 F.3d 513, 521–22 (7th Cir. 2019). To the contrary, the undisputed evidence shows that Wexford approved every test and procedure that its doctors recommended for Murphy. Likewise, no evidence supports Murphy's contention that Wexford knew or deliberately disregarded that its physicians unjustifiably delayed treatment or prolonged pain. Instead, he cites suits by prisoners "alleging the same constitutional violations" against Wexford to support his assertion that Wexford has "knowledge of the systemic breakdown within its healthcare." But allegations against Wexford are not evidence that constitutional violations occurred, let alone "with such frequency that [Wexford] ignored an obvious risk of serious harm." *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 967 (7th Cir. 2019).

AFFIRMED