NONPRECEDENTIAL DISPOSITION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 September 18, 2023*
Decided October 3, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2672

STEVEN BROWN,
Plaintiff-Appellant,

v.

FELICIA ADKINS, et al.
Defendants-Appellees.

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

No. 20-CV-2016

Sue E. Myerscough,
Judge.

O R D E R

Steven Brown, an Illinois prisoner who suffers from vision problems in his right eye, sued his warden and a prison optometrist under 42 U.S.C. § 1983, alleging that they

* We grant the request of Kim Larson to be removed as a defendant-appellee in her official capacity and substituted with Felicia Adkins, the current warden. See FED. R. APP. P. 43(c)(2). 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).

acted with deliberate indifference to his medical needs by delaying surgery and failing to issue sunglasses soon enough. The district court granted the defendants' motion for summary judgment. We affirm because no reasonable jury could find that the defendants consciously disregarded a risk to Brown's health or that any delay in visiting specialists and getting surgery caused him harm.

Because this appeal challenges summary judgment, we recount the facts in the light most favorable to Brown and draw all reasonable inferences in his favor. See *Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 457 (7th Cir. 2020). While Brown was incarcerated at the Danville Correctional Center in Illinois, he began having difficulty seeing out of his right eye. He first submitted requests for treatment to Danville's medical unit on December 12, 2019, and was referred to a prison optometrist, Evelyn Moore, on January 6, 2020. Dr. Moore, in turn, referred Brown to an outside optometrist on an urgent basis after determining that he might benefit from further examination using equipment that was not available at the prison. Once the referral was approved, Brown visited Carle Physician Group, where the outside optometrist diagnosed him with a cataract and instructed Brown to consider surgery and return in February to consult with an ophthalmologist. Danville's medical director scheduled that appointment for early April but later rescheduled it to June because of the COVID-19 pandemic. (Brown testified that both appointments were for surgery, but Carle's records reflect that Brown had been recommended and booked only for a consultation.)

Dr. Moore saw Brown for the last time in March 2020. During that visit, she noted that Brown had been seen at Carle and added her own recommendation that he receive cataract surgery. She left her job at Danville shortly afterwards.

At the June 2020 visit to Carle, an ophthalmologist, Abou Cham, diagnosed Brown with a cataract and suspected glaucoma. Dr. Cham planned for non-emergency surgery to remove the cataract and prescribed eye drops for the glaucoma. Consistent with Dr. Cham's plan, prison officials approved a non-urgent referral for surgery, and the procedure was scheduled for August 19. Brown did not have surgery on that date, however, apparently because Dr. Cham then recommended a second procedure to place a stent in Brown's eye to treat his glaucoma. Both procedures were then scheduled for September 16, but they were rescheduled for security reasons and performed on September 30. Brown still suffers vision problems and believes that the surgeries occurred too late to be effective.

Meanwhile, Brown had repeatedly filed medical requests for sunglasses, insisting that he needed them to protect his eyes and that Dr. Cham had sent a pair to the prison for him after the June appointment. Non-party medical staff denied the requests, explaining that Brown was not to receive the sunglasses until after surgery.

While awaiting surgery, Brown sued Danville's then warden, Kim Larson, in her individual and official capacities, Dr. Moore, and two unidentified nurses, alleging that they were deliberately indifferent by ignoring his December 2019 medical requests, delaying the surgery, and refusing to provide him the medically necessary sunglasses. The district court screened the complaint, see 28 U.S.C. § 1915A, and allowed Brown to proceed on Eighth Amendment deliberate-indifference claims under 42 U.S.C. § 1983 against each defendant. (The district court later dismissed the nurses, and Brown does not argue on appeal that this was erroneous; he also does not discuss the official-capacity claims against then-warden Larson. We discuss these issues no further.)

During discovery, Brown filed a motion to compel, arguing that the defendants were improperly withholding copies of some of his medical requests and the identity of the Danville employees responsible for scheduling appointments. The district court did not immediately rule on the motion.

The defendants then moved for summary judgment. Dr. Moore argued that no reasonable jury could find for Brown because of her unrefuted attestation that she did not see or learn about his December 2019 medical requests, the evidence that she immediately referred him for further examination when she saw him in January 2020, and the lack of proof that any delay harmed him. Larson, too, attested that she did not see Brown's medical requests and argued that she was not involved in Brown's treatment. Larson additionally argued that even if she had been aware of Brown's condition, she was permitted to rely on the judgment of Brown's doctors. Both defendants also argued that no reasonable jury could find that they caused an intolerable delay in treatment because they were not responsible for reviewing medical requests or scheduling appointments. Brown responded that his request forms—only some of which he had entered into evidence—proved that the defendants had seen his requests, but he did not say how. (The forms that were the subject of his motion to compel still were not in the record.) He also asserted that Dr. Cham later told him the surgery would have resolved his vision problems if he had received it in February 2020.

The district court first assumed for summary judgment purposes that the defendants knew about Brown's requests and could control how quickly he received

treatment. (The court ruled that those assumptions mooted Brown's motion to compel production of the forms.) Therefore, the court explained, a reasonable jury could find that the defendants should have ensured that Brown saw an optometrist more quickly after his initial complaints. But, the court continued, no reasonable jury could find for Brown because he had provided no evidence that the delays had caused him harm. Indeed, the court noted, Brown's medical records established that his condition did not require emergency care. And the court rejected as inadmissible hearsay Brown's report of Dr. Cham's purported statement that an earlier surgery would have been more effective. Finally, the court ruled that no reasonable jury could find that failing to provide Brown with sunglasses put him at substantial risk of serious harm because no doctor had ordered Brown to wear sunglasses, and Brown provided no evidence that the lack of sunglasses worsened his condition.

We review the court's summary judgment decision de novo. *Donald*, 982 F.3d at 457. Prison officials violate the Eighth Amendment's prohibition on cruel and unusual punishment when they are deliberately indifferent to a prisoner's serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Deliberate indifference is more than negligence: Brown required evidence that the defendants consciously disregarded a serious risk to his health. *Id.* at 836–37. Because Brown alleged that the defendants delayed, rather than denied, his treatment, he also required evidence that the delay itself caused harm. See *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 964 (7th Cir. 2019).

Under that standard, we agree with the district court that no reasonable jury could find for Brown. First, Brown offered no evidence that any delay harmed him. Even if we (like the district court) assumed that Dr. Moore and Larson knew of and disregarded Brown's requests for care, Brown needed to provide medical evidence that the delay in surgery or denial of sunglasses caused him harm. See *id.*; *Jackson v. Pollion*, 733 F.3d 786, 790 (7th Cir. 2013). He did not; indeed, all the doctors who examined Brown after Dr. Moore concluded that his condition was not urgent, and none stated that he required sunglasses. Brown maintains that Dr. Cham told him that if he had received the surgery sooner, his vision problems would be over. But the district court did not abuse its discretion in concluding that Dr. Cham's statement was inadmissible hearsay: He did not express this purported opinion under oath, and Brown offered the out-of-court statement for its truth. See FED. R. EVID. 801(c); *MMG Fin. Corp. v. Midwest Amusements Park, LLC*, 630 F.3d 651, 656 (7th Cir. 2011). Brown does not argue that the statement is not hearsay or is covered by an exception to the rule that hearsay is inadmissible. See FED. RS. EVID. 801(d), 802.

Second, no reasonable jury could find that either defendant consciously disregarded Brown's medical needs. Because Dr. Moore is a medical professional, Brown needed sufficient evidence that she departed so substantially from accepted professional standards that she failed to exercise professional judgment at all. See *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 663 (7th Cir. 2016). The undisputed evidence would preclude a reasonable jury from making that finding. At the January appointment, Dr. Moore immediately referred Brown to an outside specialist who could examine him with better equipment. See *Donald*, 982 F.3d at 462 (7th Cir. 2020) (affirming summary judgment for doctor who referred prisoner with eye issue on urgent basis to outside specialist upon first examination). The only other time Dr. Moore saw Brown, she noted his recent consultation with Dr. Cham and asked the appropriate officials to order surgery for Brown. And Larson, as a nonmedical administrator, was entitled to rely on the professional judgment of Brown's doctors, including their assessments that Brown did not need emergency surgery or sunglasses. See *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 767–68 (7th Cir. 2021). That conclusion holds even if we, like the district court, draw the inference against the defendants that they were involved in scheduling Brown's treatment.

AFFIRMED