NONPRECEDENTIAL DISPOSITION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 October 24, 2023*
Decided November 7, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-1158

DONTRELL L. GORDON, SR.,
Plaintiff-Appellant,

v.

PAM SHURPIT,
Defendant-Appellee.

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

No. 20-CV-1541

William E. Duffin,
Magistrate Judge.

O R D E R

Dontrell Gordon, a former Wisconsin inmate, appeals the summary judgment rejecting his claim that the prison's food-service administrator acted with deliberate indifference in violation of the Eighth Amendment, when she ignored his complaints about the food he was receiving. *See* 42 U.S.C. § 1983. We affirm.

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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).

While imprisoned at Dodge Correctional Institution for several months in 2020, Gordon—according to his verified complaints—began writing to the food-service department to complain about being served food that was either spoiled or incompatible with his low-fiber diet. Pam Shurpit, the prison's food-service administrator, denied receiving any such correspondence. Gordon eventually filed an Inmate Complaint with the prison, asserting that his meals did not comport with his diet. An investigator confirmed with Shurpit that Gordon had been receiving the correct meals, and the warden dismissed the complaint. Gordon later raised the concerns about his food on three "Interview/Information Request" forms, the formal means by which inmates can communicate with officials at Dodge.

Invoking the Eighth Amendment, Gordon then sued Shurpit and several other officials at Dodge for deliberate indifference in ignoring his complaints about spoiled food and failing to accommodate his low-fiber diet. After Gordon amended his complaint twice, the court screened it under 28 U.S.C. § 1915A(a), dismissed all defendants except for Shurpit, and permitted him to proceed only on the claim that Shurpit knew he was receiving spoiled food and did not take action to resolve the issue. Later, a magistrate judge, proceeding with consent under 28 U.S.C. § 636(c), entered summary judgment for Shurpit. The judge concluded that Gordon submitted no evidence that Shurpit knew he was receiving spoiled food.

On appeal, Gordon asserts that he did introduce such evidence—through prior correspondence with Shurpit (he furnishes no further details) and records of his daily use of Pepto Bismol, which, he maintains, proves that he received food that was not good for his stomach. But even if we accept as true the statements in Gordon's verified complaints[1] that he contacted the food-service department about spoiled food, he produced no evidence that Shurpit ever knew about this correspondence. True, he sent one Interview/Information Request form directly to her, but that form addressed only his concerns about his diet. And although another form complained of spoiled food, he

[1] Gordon's original and second amended complaints were verified because Gordon signed them under penalty of perjury. *Ford v. Wilson*, 90 F.3d 245, 247 (7th Cir. 1996). We treat verified complaints as affidavits and allow them to serve as evidence for purposes of summary judgment. *Jones v. Van Lanen*, 27 F.4th 1280, 1285 (7th Cir. 2022). And even though the original verified complaint was no longer operative for pleading purposes, the factual allegations within it remained admissible for evidentiary purposes. *Beal v. Beller*, 847 F.3d 897, 901–02 (7th Cir. 2017).

directed that form to a different department, and there is no suggestion in the record that Shurpit received it. Without relevant evidence, no jury could conclude that Shurpit knew of and disregarded a risk to Gordon. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Nor could a jury infer, based only on Gordon's use of Pepto Bismol, that Shurpit must have known of a risk of spoiled food. *Cf. id.* at 842–43 (suggesting that a jury could infer knowledge if the risk were sufficiently obvious or pervasive).

To the extent Gordon believes that the district court disregarded his claim that Shurpit acted with deliberate indifference by changing his low-fiber diet, this claim was beyond the scope of the court's screening order. In that order, the court explained that Gordon's second amended complaint—which addressed only the matter of spoiled food—superseded all other claims from his original complaint. *See Riley v. Elkhart Cmty. Schs.*, 829 F.3d 886, 890 (7th Cir. 2016). In any event, Gordon offers nothing to counter the district court's determination that his own submissions show that the foods he received—white rice, green beans, and applesauce—complied with his low-fiber diet.

AFFIRMED