

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Scott Konitzer a/k/a Donna Dawn Konitzer v. Dr. Prapti P. Kuber, et
al.

Konitzer · No. 23-cv-1500 · Decided March 27, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin granted defendants’ motion for summary judgment in an incarcerated plaintiff’s 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs based on the delayed provision of cough medication. The court dismissed the plaintiff’s withdrawn state-law negligence claim and concluded that the defendants’ treatment decisions reflected professional medical judgment rather than deliberate indifference.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	Stephen C. Dries
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	March 27, 2026
DOCKET	23-cv-1500
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se incarcerated plaintiff brought an action under 42 U.S.C. § 1983 alleging Eighth Amendment deliberate indifference to serious medical needs and asserting a supplemental state-law negligence claim. Defendants moved for summary judgment. Plaintiff withdrew the negligence claim.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court viewed reasonable inferences in favor of the nonmovant, while requiring Konitzer, as the party bearing the ultimate burden of proof, to produce admissible evidence supporting a reasonable jury verdict.
PRECEDENTIAL VALUE	unpublished district court order

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section 1983

cruel and unusual punishment

summary judgment

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QUESTIONS PRESENTED

1. Whether the defendants were deliberately indifferent under the Eighth Amendment to Konitzer's serious medical needs by delaying or failing to provide the cough suppressant Tessalon.
2. Whether the defendants were entitled to summary judgment on the Eighth Amendment claim based on their exercise of professional medical judgment and Konitzer's failure to show avoidable injury caused by the alleged delay.
3. Whether the withdrawn state-law negligence claim should be dismissed.
4. Whether the court needed to reach the defendants' qualified-immunity defense after granting summary judgment on the merits.

HOLDINGS

1. The defendants were not deliberately indifferent to Konitzer's serious medical needs. Their decision to initially treat her cough with Mucinex and permit a productive cough, and to delay prescribing Tessalon, was based on professional medical judgment and did not constitute a substantial departure from accepted professional practice.
2. An alleged failure to follow a departmental or institutional regulation does not, by itself, establish a constitutional violation under 42 U.S.C. § 1983.
3. The state-law negligence claim was dismissed after Konitzer withdrew it.
4. Summary judgment was appropriate because no reasonable factfinder could conclude from the record that the defendants acted with deliberate indifference or that the alleged failure to provide cough suppressant caused a constitutionally cognizable injury.

KEY QUOTATIONS

“To establish that a medical official acted with deliberate indifference, a plaintiff “must show more than mere evidence of malpractice.”” (6)

“This means “the defendant’s chosen ‘course of treatment’ departs radically from ‘accepted professional practice’”. ” (6)

““By definition a treatment decision that’s based on professional judgment cannot evince deliberate indifference because professional judgment implies a choice of what the defendant believed to be the best course of treatment.”” (7)

“§ 1983 only “protects plaintiffs from constitutional violations, not violations of state laws, or . . . departmental regulations.”” (8)

FACTUAL BACKGROUND

Konitzer was incarcerated at Racine Correctional Institution and developed fever, cough, loss of taste and smell, and other symptoms in January 2021. After an emergency-room evaluation showed clear breath sounds and bilateral opacities consistent with a viral infection, a nondefendant physician prescribed the cough suppressant Tessalon, while Racine medical staff initially continued Mucinex and acetaminophen. Dr. Kuber later ordered Tessalon after learning that Konitzer continued coughing, but Konitzer apparently did not receive it because of a pharmacy or supply issue; by January 11, she reported that the cough had stopped and that she felt fully recovered. The court concluded that the defendants' treatment decisions reflected professional medical judgment and that the record did not show constitutionally deliberate indifference or injury caused by the delay.

PROCEDURAL HISTORY

Konitzer filed suit concerning the alleged failure to provide cough-suppressant medication during an illness in January 2021. The case was transferred from the Western District of Wisconsin to the Eastern District of Wisconsin. The court had allowed an Eighth Amendment claim against Dr. Prapti Kuber, Nurse Amy Epping, and Nurse Barbara Bergstrom and exercised supplemental jurisdiction over the negligence claim. Jennifer Rosenbaum and an unidentified Jane Doe defendant were dismissed because Rosenbaum did not appear and Konitzer did not timely pursue default judgment or identify the Jane Doe defendant. The court granted the remaining defendants' motion for summary judgment, dismissed the withdrawn negligence claim and the case, and ordered entry of judgment.

DISPOSITION

dismissed

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)
- Gunville v. Walker, 583 F.3d 979, 985 (7th Cir. 2009)
- Durkin v. Equifax Check Servs., Inc., 406 F.3d 410, 414 (7th Cir. 2005)
- Turner v. J.V.D.B. & Assoc., Inc., 330 F.3d 991, 994 (7th Cir. 2003)
- Hunter v. Mueske, 73 F.4th 561, 565 (7th Cir. 2023)
- Roe v. Elyea, 631 F.3d 843, 864 (7th Cir. 2011)
- Petties v. Carter, 836 F.3d 722, 728-29 (7th Cir. 2016)
- Zaya v. Sood, 836 F.3d 800, 805 (7th Cir. 2016)
- Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014)
- Cole v. Fromm, 94 F.3d 254, 260 (7th Cir. 1996)
- Holloway v. Delaware Cnty. Sheriff, 700 F.3d 1062, 1075-76 (7th Cir. 2012)
- Gabb v. Wexford Health Sources, Inc., 945 F.3d 1027, 1034 (7th Cir. 2019)

- Berry v. Peterman, 604 F.3d 435, 438-39 (7th Cir. 2010)
- Scott v. Edinburg, 346 F.3d 752, 760 (7th Cir. 2003)

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