

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Harrison v. Wexford Health Sources, Inc.

669 F. App'x 797 (7th Cir. 2016) · Decided October 28, 2016

SUMMARY

The Seventh Circuit affirmed summary judgment for prison employees, Wexford Health Sources, Inc., and a medical director in an inmate's Eighth Amendment deliberate-indifference action concerning treatment after a fall. The court held that the evidence did not show blatantly inappropriate medical care, an emergency requiring immediate treatment, or culpable disregard by the nonmedical defendants. The court also upheld the denial of recruited counsel because any error did not affect the outcome.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Flaum; Posner; Ripple
JURISDICTION	Federal
DECIDED	October 28, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harrison appealed the grant of summary judgment to the defendants in his 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs in violation of the Eighth Amendment, as well as the denial of his motions for recruited counsel.
STANDARD OF REVIEW	Summary judgment was reviewed on the record viewed in the light most favorable to Harrison. The denial of recruited counsel was reviewed for whether the district court properly assessed Harrison's competency to litigate claims of the relevant complexity and, as to the identified error, whether recruited counsel would have affected the outcome.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Derrick Harrison v. Wexford Health Sources, Inc., Saleh Obaisi, Jennifer Encarnación, Troy Mayes

TOPICS

prisoners rights

section 1983

cruel and unusual punishment

standard of review

appellate procedure

PRACTICE AREAS

civil rights litigation

prisoner medical care

constitutional torts

appellate procedure

QUESTIONS PRESENTED

1. Whether Dr. Obaisi acted with deliberate indifference to Harrison's serious medical needs by delaying diagnostic testing and specialist referral or prescribing allegedly ineffective medication.
2. Whether Wexford Health Sources, Inc. was liable under § 1983 for an allegedly unconstitutional medical-care policy or delay in initial treatment.
3. Whether Sergeant Mayes acted with deliberate indifference by relying on the Health Care Unit's determination that Harrison could wait until the next day for treatment.
4. Whether Nurse Encarnación acted with deliberate indifference by referring Harrison to the Health Care Unit rather than providing immediate treatment.
5. Whether the district court abused its discretion or otherwise erred by denying Harrison's motions for recruited counsel.

HOLDINGS

1. Dr. Obaisi was entitled to summary judgment because Harrison presented no evidence that the treatment was blatantly inappropriate or violated professional medical standards.
2. Wexford was entitled to summary judgment because Harrison failed to establish an underlying constitutional violation or actionable injury attributable to the alleged corporate policy.
3. Mayes was entitled to summary judgment because Harrison presented no evidence that Mayes had a culpable state of mind or recklessly disregarded Harrison's pain when he deferred to the Health Care Unit's decision to treat Harrison the next day.
4. Encarnación was entitled to summary judgment because she referred Harrison's case to the Health Care Unit, was not responsible for that unit's treatment delay, and did not violate professional medical standards.
5. Although the district court should have assessed Harrison's competency to litigate the complex claims when ruling on his second motion for recruited counsel, the error did not warrant relief because recruited counsel would not have affected the outcome.

KEY QUOTATIONS

“A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate’s pain.” (799)

“Because Harrison ‘has not established a constitutional problem with his treatment and thus did not suffer actionable injury from the policy he attributes to the corporation,’” (799)

FACTUAL BACKGROUND

Harrison injured his back and neck after falling while attempting to close high windows at Statesville Correctional Center. Prison personnel arranged medical evaluation the next day, and Dr. Obaisi and other Wexford medical providers treated Harrison with medications, imaging, injections, activity restrictions, specialist referrals, and physical therapy over the following months. Harrison alleged that the defendants delayed an MRI and specialist referral, failed to prescribe a particular antidepressant, failed to provide immediate post-fall care, and that Wexford maintained an unconstitutional policy of providing only minimal medical care.

PROCEDURAL HISTORY

Harrison, an Illinois inmate, sued prison personnel, Wexford Health Sources, Inc., and the prison medical director over treatment following a back injury. The district court concluded that Harrison had an objectively serious medical condition but that no defendant acted with deliberate indifference, and it granted defendants' motions for summary judgment. The district court also denied Harrison's repeated requests for recruited counsel. The Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Hooper v. Proctor Health Care Inc., 804 F.3d 846, 849 (7th Cir. 2015)
- Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014)
- McGowan v. Hulick, 612 F.3d 636, 640 (7th Cir. 2010)
- Ray v. Wexford Health Sources, Inc., 706 F.3d 864, 866 (7th Cir. 2013)
- Knight v. Wiseman, 590 F.3d 458, 465 (7th Cir. 2009)
- Olson v. Morgan, 750 F.3d 708, 712 (7th Cir. 2014)
- Tidwell v. Hicks, 791 F.3d 704, 709 (7th Cir. 2015)

OPINION

PER CURIAM.

ORDER Derrick Harrison, an Illinois inmate, sued two prison employees, Wexford *798Health Sources, and the prison's medical director for deliberate indifference in treating his back injury after he fell while trying to close several high windows.

The district court granted the defendants' motions for summary judgment. We affirm. Unless otherwise noted the following facts are undisputed and presented in the light most favorable to Harrison, the party opposing summary judgment. See Hooper v. Proctor Health Care Inc., 804 F.3d 846, 849 (7th Cir. 2015).

On a chilly November day at Statesville Correctional Center, Harrison, who was performing janitorial work, was directed by a prison officer to close a series of windows eight feet off of the

ground. After climbing a “bullpen cage” to reach the windows, Harrison slipped and fell onto a plastic food cart, injuring his back and neck, Harrison said that his back and neck felt stiff and in pain and that it was difficult for him to move.

Sergeant Troy Mayes had been walking with Jennifer Encarnación, a nurse, on her rounds distributing medication to prisoners in their cells, and she instructed Mayes to call the prison’s Health Care Unit, which scheduled Harrison an appointment for the following day. At his appointment Harrison received prescriptions for anti-inflammatory, muscle relaxing, and pain-relieving medications.

Two days later Harrison underwent x-rays of his cervical and lumbar spines. Harrison was referred to Dr. Saleh Obaisi, Statesville’s medical director and a Wexford employee, who told Harrison that the x-rays were negative and injected an anti-inflammatory drug into Harrison’s pelvis as well as a pain reliever into one of his hands. Dr. Obaisi also gave Harrison a two-week no-activity permit.

Dr. Obaisi saw Harrison five more times over the ensuing three months and ordered additional prescriptions for muscle relaxers and pain relievers. Harrison reported that his back pain gradually lessened. But some pain lingered, so four months after the accident, Dr. Obaisi referred Harrison to a neurosurgeon at the University of Illinois Medical Center. An MRI was taken of Harrison’s lower back, and it showed some degeneration of his lumbar spine.

Over the next year and a half, Harrison visited Dr. Obaisi and other Wexford doctors almost every month. After Harrison complained that his back pain had worsened, he received a second MRI, new prescriptions, and physical therapy. Harrison brought this suit under 42 U.S.C. § 1983 arguing that the prison defendants gave him improper medical care in violation of the Eighth Amendment.

Harrison asserted that Dr. Obaisi acted with deliberate indifference by not prescribing a particular antidepressant drug that, Harrison said, helped him sleep; Harrison also claimed that Dr. Obaisi delayed ordering him an MRI for five months and delayed letting him see a specialist for 17 months. Harrison added that Wexford had a written policy to provide prisoners with a bare minimum of medical care in violation of the Eighth Amendment.

As a final matter, Harrison contended that Mayes and Encarnación acted with deliberate indifference to his injury and pain by not providing immediate medical care after his fall.¹ Throughout the proceedings, Harrison also made seven requests for recruited counsel, none of which the court granted.

In his first, second, fourth, and sixth requests, Harrison argued he lacked the medical knowledge to challenge his diagnosis or the legal sophistication to show that his treatment was inadequate. In his first, second, fifth, and seventh requests, Harrison asserted that imprisonment constraints prevented him from obtaining sufficient access to relevant legal authorities and discovery materials.

And in his third and sixth requests for counsel, Harrison noted that a jailhouse. lawyer who had helped him litigate his case could no longer offer assistance. The district court ultimately granted summary judgment for the defendants.

The court concluded that although Harrison had an objectively serious medical condition, the defendants had not acted with deliberate indifference. Dr. Obaisi, the court determined, had been “responsive” to Harrison’s complaints, repeatedly giving him physical examinations, prescribing pain relievers and muscle relaxers, and ordering diagnostic examinations, including two MRIs and a referral to specialists at UIC.

As for Wexford, the court found that it had “consistently” given Harrison access to Stateville medical professionals and outside specialists. With regard to Mayes, a nonmedical professional, the court decided that he justifiably relied on the Health Care Unit’s medical judgment that Harrison could receive treatment the day after his fall.

As for Nurse Encarna-ción, the court determined that Harrison’s condition did not present a medical emergency requiring immediate care from her, and she was not responsible for the Health Care Unit’s delay in providing Harrison treatment.

On appeal Harrison asserts that Dr. Obaisi acted with deliberate indifference by waiting 17 months to refer him to a specialist and by prescribing medication that the doctor knew would not be effective. But as the district court explained, Harrison has not pointed to any evidence in the record reflecting that the treatment was “blatantly inappropriate” or otherwise violated professional medical standards.

Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014) (internal citation and quotation marks omitted). During these 17 months, Dr. Obaisi regularly altered Harrison’s prescriptions for pain-relieving, anti-inflammatory, and muscle-relaxing drugs based on Harrison’s condition. Dr. Obaisi also ordered and reviewed Harrison’s MRI to ensure that he properly diagnosed his injury.

Because the record does not contain evidence showing that Dr. Obaisi’s care violated professional medical standards, the district court properly granted Dr. Obaisi summary judgment. Harrison reiterates that Wexford violated its own policy of having a doctor onsite and impermissibly delayed in providing him initial treatment shortly after his fall. He contends that Wexford should have given him pain-relieving medication shortly after his injury instead of making him cope with significant pain until his appointment. “A delay in treatment may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate’s pain.” *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir.

2010). We agree with the district court that the record does not contain evidence from which a jury reasonably could conclude that Harrison’s fall created a medical emergency requiring immediate treatment. Because Harrison “has not established a constitutional problem with his treatment and

thus did not suffer actionable injury from the policy he attributes to the corporation,” *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir.

2013), we need not consider whether Wexford violated its alleged policy. Harrison also contends that Mayes, upon learning that the Health Care Unit would not treat him until the next day, acted with deliberate indifference by not instructing Encarnación to provide him *800with immediate medical care. But as Mayes explained in his affidavit, he could not order Encarnación to care for Harrison because Mayes lacked the authority to give this directive.

Harrison apparently expects that Mayes should have second-guessed the Health Care Unit’s determination that Harrison did not require immediate medical attention. But Harrison has pointed to no evidence showing that Mayes had a culpable state of mind or recklessly disregarded his pain when Mayes deferred to this unit’s decision that Harrison be treated the next day.

See *Knight v. Wiseman*, 590 F.3d 458, 465 (7th Cir. 2009). The district court therefore correctly granted Mayes summary judgment. Harrison finally asserts that Encarnación violated the Eighth Amendment by not stabilizing his condition soon after his fall even though the Health Care Unit determined that he could wait to receive treatment. Harrison imputes to Encarnación responsibility for his care that she did not have.

Given the lack of evidence that Harrison’s injury created a medical emergency, Harrison cannot create a fact question that Encarnación violated professional medical standards when she referred his case to the Health Care Unit. Further, because Encarnación was not responsible for the Health Care Unit’s delay in treating Harrison, he also cannot raise a fact question over her treatment of his injuries and pain.

Harrison also argues that the district court should not have denied his requests for recruited counsel because, he asserts, he lacked the expertise and sophistication to evaluate Wexford’s medical diagnosis of his condition. With regard to the denial of Harrison’s second motion for recruited counsel, the district court should have assessed Harrison’s competency to litigate his claims given their complexity.

See *Olson v. Morgan*, 750 F.3d 708, 712 (7th Cir. 2014). But we have no reason to conclude that recruited counsel would have affected this case’s outcome. See *Tidwell v. Hicks*, 791 F.3d 704, 709 (7th Cir. 2015). We therefore uphold the district court’s decisions to deny Harrison’s motions for recruited counsel. **AFFIRMED.** Harrison did not raise his retaliation claim against Mayes on appeal, and we therefore do not consider it.