

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
INDIANA, SOUTH BEND DIVISION

Frank W. Emery v. Ron Neal, Merthakis, and Karen Fugan

Emery · No. 3:23cv809 DRL-AZ · Decided March 19, 2026

SUMMARY

The United States District Court for the Northern District of Indiana addresses Frank W. Emery’s motion for a preliminary injunction concerning medical care for recurrent kidney stones while incarcerated. The court finds that his ongoing preventive care appears constitutionally adequate but that the record is insufficient regarding treatment during acute episodes of passing kidney stones. The court orders the Warden to file a supplemental brief addressing the preliminary-injunction factors and proposing an appropriate medical-care plan, and permits Emery to reply.

CASE DETAILS

COURT	United States District Court for the Northern District of Indiana, South Bend Division
WRITING FOR THE COURT	Damon R. Leichty
JURISDICTION	United States District Court for the Northern District of Indiana, South Bend Division
DECIDED	March 19, 2026
DOCKET	3:23cv809 DRL-AZ
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff-prisoner moved for a preliminary injunction concerning medical care for recurrent kidney stones. The court ordered the Warden to submit a supplemental brief addressing the preliminary-injunction factors and a possible treatment plan, and permitted the plaintiff to reply.
STANDARD OF REVIEW	A preliminary injunction requires a clear showing that the movant is likely to succeed on the merits, likely to suffer irreparable harm without relief, that the balance of equities favors relief, and that an injunction is in the public interest. Mandatory injunctions are viewed cautiously and issued sparingly; prison injunctions must be narrowly drawn, extend no further than necessary, and use the least intrusive means to remedy a constitutional violation.

PRECEDENTIAL VALUE	unpublished district court opinion; persuasive value only
PARTIES	Frank W. Emery v. Ron Neal, Merthakis, Karen Fugan

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QUESTIONS PRESENTED

1. Whether Emery had shown entitlement to a preliminary injunction requiring constitutionally adequate medical care during future episodes in which he actively passes a kidney stone.
2. Whether the record supported a finding that Emery was receiving constitutionally adequate preventive care for recurrent kidney-stone formation.
3. Whether the recurrent kidney-stone episodes were capable of repetition yet evading review for purposes of prospective injunctive relief.

HOLDINGS

1. The existing record showed constitutionally adequate care addressing the risk of future kidney stones through Emery's daily hydrochlorothiazide prescription.
2. The record was insufficient to determine whether Emery was receiving constitutionally adequate treatment, including pain management, while actively passing a kidney stone.
3. The absence of a currently active kidney stone did not necessarily preclude prospective relief because the alleged harm may be capable of repetition yet evading review.

KEY QUOTATIONS

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."

"Rather, they are entitled to "reasonable measures to meet a substantial risk of serious harm.""

"The pain associated with passing a kidney stone qualifies as a serious medical need."

"The record establishes some likelihood that Mr. Emery will suffer another kidney stone."

FACTUAL BACKGROUND

Emery entered the Indiana Department of Correction in 2022 with kidney stones, and surgery for a stone that would not pass on its own was interrupted by his incarceration. Medical records showed ongoing preventive treatment with hydrochlorothiazide and earlier prescriptions for tamsulosin and pain medications. Emery

reported passing kidney stones in December 2024, May 2025, and July 2025 without receiving requested medication or documented medical attention, while the record showed medical intervention during one January 2024 episode. The Warden’s response did not address the later acute episodes.

PROCEDURAL HISTORY

Emery was granted leave to proceed on claims against the Warden of Indiana State Prison for permanent injunctive relief concerning medical care for recurrent kidney stones and on other damages claims. He moved for a preliminary injunction raising concerns about treatment for a large kidney stone and recurrent acute episodes, then withdrew the claim concerning the large stone. After briefing, the court limited the motion to recurrent kidney-stone care, found the record adequate concerning preventive medication but incomplete concerning treatment during acute episodes, and ordered supplemental briefing rather than resolving the preliminary-injunction motion.

DISPOSITION

other

CASES CITED

- Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)
- Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 22 (2008)
- Illinois Republican Party v. Pritzker, 973 F.3d 760, 762-63 (7th Cir. 2020)
- Doe v. Univ. of S. Indiana, 43 F.4th 784, 791 (7th Cir. 2022)
- Nken v. Holder, 556 U.S. 418, 435 (2009)
- Mays v. Dart, 974 F.3d 810, 818 (7th Cir. 2020)
- Westefer v. Neal, 682 F.3d 679, 681 (7th Cir. 2012)
- Rasho v. Jeffreys, 22 F.4th 703, 711-13 (7th Cir. 2022)
- Estelle v. Gamble, 429 U.S. 97, 104 (1976)
- Walker v. Wexford Health Sources, Inc., 940 F.3d 954, 965 (7th Cir. 2019)
- Forbes v. Edgar, 112 F.3d 262, 267 (7th Cir. 1997)
- Gabb v. Wexford Health Sources, Inc., 945 F.3d 1027, 1033 (7th Cir. 2019)
- Montanez v. Feinerman, 439 F. Appx. 545, 549 (7th Cir. 2011)
- Goodloe v. Sood, 947 F.3d 1026, 1031 (7th Cir. 2020)
- Fed. Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 462 (2007)
- Spencer v. Kemna, 523 U.S. 1, 17 (1998)

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