

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DeWayne Knight v. Thomas Grossman

No. 19-1740, United States Court of Appeals for the Seventh Circuit (October 31, 2019)

SUMMARY

The Seventh Circuit held that prisoners have a Fourteenth Amendment right to informed consent, adopting the Second Circuit's **Pabon** standard: a prisoner must prove (1) deprivation of information a reasonable patient would need, (2) defendant's deliberate indifference to the right to refuse treatment, and (3) that the prisoner would have refused treatment if informed; then the right is balanced against countervailing state interests. The court affirmed summary judgment for the doctor on both the Eighth Amendment deliberate indifference claim (no evidence of knowing disregard of serious medical need) and the Fourteenth Amendment claim (prisoner failed to show he would have refused the alternative surgery). The case clarifies that deliberate indifference to informed consent is distinct from deliberate indifference to medical needs, and that mere speculation about refusing treatment is insufficient.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Scudder; Flaum; Rovner
JURISDICTION	Federal
DECIDED	October 31, 2019
DOCKET	19-1740
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Wisconsin, No. 2:16-cv-1644, William E. Duffin, Magistrate Judge. The district court granted summary judgment in favor of the defendant on Eighth and Fourteenth Amendment claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, construing all facts and inferences in favor of the nonmoving party. See <i>Lavite v. Dunstan</i> , 932 F.3d 1020, 1027 (7th Cir. 2019).
PRECEDENTIAL VALUE	published
PARTIES	DeWayne D. Knight v. Thomas Grossman, Jr., M.D.

TOPICS

civil rights

section 1983

fourteenth amendment

summary judgment

standard of review

PRACTICE AREAS

Civil Rights

Prisoner Litigation

Constitutional Law

QUESTIONS PRESENTED

1. Whether Dr. Grossman acted with deliberate indifference to Knight's serious medical needs in violation of the Eighth Amendment.
2. Whether Dr. Grossman violated Knight's Fourteenth Amendment due process right to informed consent.

HOLDINGS

1. No reasonable jury could find that Dr. Grossman acted with deliberate indifference; the record does not support a finding that the abrasion arthroplasty or recovery instructions deviated from accepted medical standards, and Knight failed to meet the demanding standard of showing no minimally competent professional would have chosen the same course.
2. Prisoners have a Fourteenth Amendment right to informed consent, but Knight failed to prove that he would have refused the abrasion arthroplasty had he been fully informed, so summary judgment was proper.

KEY QUOTATIONS

"We now join all other circuits to have considered the question in holding that prisoners have a Fourteenth Amendment right to informed consent. The right to refuse medical treatment carries with it an implied right to the information necessary to make an informed decision about whether to refuse the treatment." (at 9)

"A prisoner's claim of the violation of his right to informed consent is evaluated under a two-step inquiry. The prisoner must first establish that his right to informed consent was violated. To do this, the prisoner must prove that (1) he was deprived of information that a reasonable patient would deem necessary to make an informed decision about his medical treatment, (2) the defendant acted with deliberate indifference to the prisoner's right to refuse treatment, and (3) if the prisoner had received the information, he would have refused the treatment. If the prisoner establishes that his right to informed consent has been violated, we then take the second and final step of balancing the prisoner's right to informed consent against countervailing state interests. Liability arises only if, in the end, the prisoner's right outweighs the state interests." (at 11-12)

FACTUAL BACKGROUND

DeWayne Knight, a prisoner, reinjured his left knee and was diagnosed by Dr. Grossman with a torn ACL revision. Dr. Grossman performed surgery but upon opening the knee found the ACL intact and instead performed alternative arthroscopic procedures (chondroplasty, notchplasty, and abrasion arthroplasty) without Knight's prior consent. Knight later learned of the alternative surgery and brought suit.

PROCEDURAL HISTORY

Knight brought suit under 42 U.S.C. § 1983 alleging deliberate indifference to his medical needs (Eighth Amendment) and violation of his right to informed consent (Fourteenth Amendment). The district court entered summary judgment in favor of Dr. Grossman. Knight appealed.

DISPOSITION

affirmed

CASES CITED

- Yochim v. Carson, 935 F.3d 586 (7th Cir. 2019)
- Lavite v. Dunstan, 932 F.3d 1020 (7th Cir. 2019)
- Estelle v. Gamble, 429 U.S. 97 (1976)
- Whiting v. Wexford Health Sources, Inc., 839 F.3d 658 (7th Cir. 2016)
- Farmer v. Brennan, 511 U.S. 825 (1994)
- Wilson v. Wexford Health Sources, Inc., 932 F.3d 513 (7th Cir. 2019)
- Petties v. Carter, 836 F.3d 722 (7th Cir. 2016) (en banc)
- Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990)
- Washington v. Harper, 494 U.S. 210 (1990)
- Pabon v. Wright, 459 F.3d 241 (2d Cir. 2006)
- Benson v. Terhune, 304 F.3d 874 (9th Cir. 2002)
- White v. Napoleon, 897 F.2d 103 (3d Cir. 1990)
- Cox v. Brubaker, 558 F. App'x 677 (7th Cir. 2014)
- Phillips v. Wexford Health Sources, Inc., 522 F. App'x 364 (7th Cir. 2013)
- County of Sacramento v. Lewis, 523 U.S. 833 (1998)
- McDowell v. Vill. of Lansing, 763 F.3d 762 (7th Cir. 2014)
- Turner v. Safley, 482 U.S. 78 (1987)