

NONPRECEDENTIAL DISPOSITION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 April 10, 2019*
Decided April 11, 2019

Before

AMY C. BARRETT, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 18-2066

ADAM PEGUES,
Plaintiff-Appellant,

v.

JOHN COE, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 16-CV-239-SMY-RJD

Staci M. Yandle,
Judge.

ORDER

Adam Pegues, a former Illinois inmate, reported experiencing unalleviated pain in his stomach, back, and legs for more than three years while he was incarcerated. The prison's medical staff administered tests and x-rays and referred him to a physical therapist, but they could not determine any cause of his pain. Pegues sued medical staff, the medical contractor, and prison staff for deliberate indifference and for failure to accommodate his disability-related needs. The district court entered summary judgment for the defendants. Because Pegues did not submit evidence from which a

* 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).

reasonable jury could find that any defendant deliberately disregarded his health, we affirm the judgment.

We recount the following facts, and make all reasonable inferences from them, in Pegues's favor. See *Kemp v. Liebel*, 877 F.3d 346, 350 (7th Cir. 2017).

When he arrived at Lawrence Correctional Center in Sumner, Illinois, in March 2014, Pegues complained to medical staff and the warden about gastrointestinal pain and blood in his stool. Over the next three years, Pegues reported that his pain intensified, but multiple rounds of lab work, examinations, and x-rays did not yield any explanation.

In March 2014, shortly after his arrival at Lawrence, Pegues was examined by Dr. John Coe, an employee of Wexford Health Services, Inc., which contracts with the Illinois Department of Corrections to provide medical services. Dr. Coe noted that Pegues's abdomen was tender, so he prescribed laxatives and later added medication for bowel spasms, an antidepressant, and Tylenol. Pegues continued to complain of abdominal pain and difficulty, and Dr. Coe admitted him to the infirmary for a few days of observation.

Throughout the fall, Pegues experienced other types of pain. In August, he said that urinating was painful, and in September he noted generalized back pain and difficulty walking. Two months later, pain persisted in his back, abdomen, and genitalia, and he requested use of a wheelchair. Both a neurological exam and urinalysis turned up nothing unusual. Dr. Coe acknowledged that Pegues had lower-back tenderness but declined to prescribe a wheelchair.

In early 2015, Pegues complained of chest pain (in addition to continuing pain in his back and abdomen), and Dr. Coe ordered a spinal x-ray. The image showed mild narrowing of the disc space in his lower spine. Dr. Coe determined that this was part of the normal aging process, but Pegues countered that diagnosis with evidence that the narrowing could also be spinal stenosis.

In October, just days after Dr. Coe recorded a normal physical exam, Pegues fell down a flight of stairs when his legs "gave out." Dr. Coe then prescribed a low gallery and low bunk. Two weeks later, Pegues complained of back pain and leg numbness that prevented him from walking. Dr. Coe performed a physical exam and found tenderness in Pegues's lower back and hyper-reflexivity in his legs. He admitted Pegues to the

infirmery, prescribed use of a wheelchair, and ordered an x-ray that again reflected disc-space narrowing.

After Pegues received a wheelchair, he requested a wheelchair attendant. He also requested permission for additional showers because he was struggling to maintain his hygiene in his cell. The prison denied these requests.

Meanwhile, Dr. Coe still could not ascertain the cause of Pegues's pain, so after a discussion with a colleague, he decided to refer Pegues to a physical therapist for evaluation. The therapist believed that Pegues was exaggerating his symptoms (she noted, for instance, that Pegues held open a door for her, despite complaining that he could not move his arms) and recommended against physical therapy. For the next two months, Pegues reported that he could not walk. Dr. Coe sent him back for another evaluation, and the therapist again recommended against physical therapy.

Pegues brought deliberate-indifference claims against the warden, Dr. Coe, Tammy Kimmel (a nurse), and Wexford as well as a claim for injunctive relief against the director of the Illinois Department of Corrections under the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794. During discovery, the district court twice denied Pegues's motions for preliminary injunctions seeking accommodations and referrals to outside medical specialists for evaluation.

The district court ultimately granted motions for summary judgment filed separately by the medical defendants and the Department of Corrections. The court determined that, although Pegues had a serious medical condition, he had not demonstrated that the defendants consciously disregarded his needs: the warden was entitled to reasonably rely on the medical defendants to provide care; the actions of Kimmel and Dr. Coe did not permit an inference that they intentionally or recklessly disregarded his needs; and Wexford was not aware of any risk posed by its policy regarding referral to outside specialists. As for Pegues's claim under the ADA and the Rehabilitation Act, the court ruled that he had not provided evidence sufficient to infer that his access to programs or services was restricted based on the Department's denial of his requested accommodations.

Two weeks after the court's judgment, Pegues was released from prison, and two weeks after that he filed his notice of appeal.

On appeal, Pegues argues generally that the defendants were deliberately indifferent to his medical needs. But Pegues has not met his burden of producing evidence from which a factfinder could conclude that any defendant consciously disregarded a risk to his health. Dr. Coe, for instance, examined Pegues on a near-monthly basis and ordered numerous tests, x-rays, and medications to address and diagnose his symptoms; when he still could not ascertain the cause of Pegues's pain, he consulted with a colleague before referring Pegues to a physical therapist. To the extent that Pegues faults Dr. Coe for delaying months to prescribe a wheelchair, the medical record—the unremarkable results from x-rays, urinalysis, and Dr. Coe's own physical and neurological examinations—does not reflect that the doctor's delay was "so blatantly inappropriate" to be intentional mistreatment. *Greeno v. Daley*, 414 F.3d 645, 654 (7th Cir. 2005). Pegues has not pointed to evidence that calls into question the adequacy of the doctor's care or treatment. See *Pyles v. Fahim*, 771 F.3d 403, 412 (7th Cir. 2014) (doctor not deliberately indifferent where tests and examinations were normal and x-rays showed only "mild" spinal degeneration).

Nor does the evidence permit any inference that Kimmel treated him with deliberate indifference. The basis of Pegues's claim against her is unclear, but the record does not contain evidence sufficient to allow a reasonable jury to find that she acted with "reckless disregard" to his medical condition. *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015).

As for Pegues's claim against Wexford, the company cannot be held liable under § 1983 unless it had a policy or custom that caused a constitutional violation, *Shields v. Ill. Dep't of Corr.*, 746 F.3d 782, 789 (7th Cir. 2014), and Pegues has not identified any constitutional violation in his treatment, *Petty v. City of Chicago*, 754 F.3d 416, 424 (7th Cir. 2014).

As for Warden Duncan, the district court correctly granted summary judgment in his favor. Pegues testified that he spoke with Duncan only once, on March 22, 2014, and he provides no evidence that Duncan knew that his pain persisted. Non-medical officials generally will be justified in believing that an inmate under medical professionals' care is in capable hands, *Arnett v. Webster*, 658 F.3d 742, 755 (7th Cir. 2011), so without evidence that Duncan knew that he was receiving inadequate medical care, Pegues cannot succeed on a claim against him.

Finally, Pegues's claims for injunctive relief under the ADA and the Rehabilitation Act are now moot, given his release from custody in April 2018. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012).

AFFIRMED