

NONPRECEDENTIAL DISPOSITION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

Argued January 29, 2020

Decided February 11, 2020

Before

WILLIAM J. BAUER, *Circuit Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-2317

ERIC D. CONNER,
Plaintiff-Appellant,

v.

JOLINDA J. WATERMAN, NATHAN BETHEL,
and SANDRA MCARDLE,
Defendants-Appellees.

Appeal from the United
States District Court for the
Eastern District of Wisconsin.

No. 17-CV-948
David E. Jones,
Magistrate Judge.

Order

Eric Conner contends that staff members at a prison in Wisconsin violated the Cruel and Unusual Punishments Clause of the Eighth Amendment, applied to the states by the Fourteenth, when they did not ensure that he always received a medicated cream to treat his dry and cracking feet. The parties consented, 28 U.S.C. §636(c), to decision by a magistrate judge, who awarded summary judgment to the defendants.

Conner has spent a good deal of his prison time in what Wisconsin calls an observation cell. When released from observation he threatens self harm. He does not carry

through on the threats, which a psychologist has concluded are manipulative, but they precipitate return to an observation cell. (He has sued over his occasional removal from observation cells, though he was unsuccessful. *Conner v. Rubin-Asch*, No. 19-1626 (7th Cir. Nov. 4, 2019) (nonprecedential decision).) But while he is in an observation cell the prison restricts his possessions, lest they be used to commit suicide or inflict non-lethal harm. Conner has filed suits about these limitations. This is one of them. *Conner v. Hoem*, No. 18-3075 (7th Cir. Apr. 23, 2019) (nonprecedential decision), is another.

Conner has dry and cracking skin, especially on his feet. When he arrived at the Wisconsin Secure Program Facility the medical staff furnished him with Minerin cream, an over-the-counter medication that alleviates this condition. He took that cream with him when assigned to an observation cell and soon used it to block the cameras that aid the observation. (He applied the cream to toilet paper, then stuck the paper to the cameras' lenses.) That caused the prison to take away the tubes of cream. The prison's psychologist put a note outside Conner's cell instructing other members of the staff not to let Conner have the tubes again but to apply the cream during daily rounds. Some days that worked, but others it did not—either because Conner refused to allow the cream to be applied (he asserted that it would come off on the floor because he was not allowed to wear socks while under observation) or because the staff making medical rounds did not have it or failed to apply it. This spotty delivery during a several-week period in 2017 violated the Constitution, Conner contends.

The argument is frivolous. The Eighth Amendment prevents a prison from ignoring a prisoner's serious medical conditions, see *Farmer v. Brennan*, 511 U.S. 825 (1994), but Conner's condition is not serious. We held exactly that in *Hoem* when rejecting Conner's contention that the absence of reliable cream administrations prevented him from taking showers, because his skin would dry out afterward. We stated that no reasonable jury could find that the lack of skin cream (and its effect on showers) was cruel and unusual under contemporary standards of decency or deprives Conner of basic needs. We relied on *Farmer*, 511 U.S. at 846, and *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

Hoem and this proceeding began as one suit, which the magistrate judge split into two. The propriety of that decision is not before us, though it is questionable. One of the items at issue in *Hoem* was skin cream, which Conner asserted was essential to allow him to shower. Because of this overlap, joinder was proper under Fed. R. Civ. P. 18 and 20(a)(2)(B). The magistrate judge's decision to split the complaint under Rule 21 separated the defendants into different groups, but the theories of liability still coincide. We repeat what we said in *Hoem*: the short-term absence of a cream that might alleviate dry and cracking skin does not present a plausible constitutional claim.

What's more, although the Eighth Amendment prevents a prison from ignoring a prisoner's serious medical needs, the record shows that these defendants did not ignore Conner's skin condition. He was provided with an appropriate cream, which he misused. After taking the cream away, defendants still provided treatment, though not on the schedule Conner preferred. The district court properly granted judgment for the defendants.

Because this suit is frivolous, the claim in the district court counts as one "strike" for the purpose of 28 U.S.C. §1915(g), and this appeal is a second.

AFFIRMED