

NONPRECEDENTIAL DISPOSITION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 February 22, 2023*

Decided March 8, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2045

MATTHEW J. SODERLIN,
Plaintiff-Appellant,

v.

LORI DOEHLING, et al.,
Defendants-Appellees.

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

No. 18-cv-899-wmc

William M. Conley,
Judge.

ORDER

Matthew Soderlin, a former Wisconsin prisoner, sued prison nurse Debra Bellin alleging that she failed to promptly refill his prescription medication and ignored a resulting medical crisis. He asserted an Eighth Amendment claim for deliberate indifference to his medical needs and a medical-negligence claim under state law. The

* 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. *See* FED. R. APP. P. 34(a)(2)(C).

district judge denied Soderlin's motions for recruited pro bono counsel and eventually entered summary judgment for Bellin. We see no error and thus affirm.

We recount the evidence in the light most favorable to Soderlin. *See White v. Woods*, 48 F.4th 853, 855 (7th Cir. 2022). Soderlin has Addison's disease, a chronic adrenal insufficiency for which he is prescribed medications, including the oral steroid hydrocortisone. Without it he is susceptible to an "Addisonian crisis," which causes severe pain, vomiting, and other symptoms. (This is Soderlin's description of his illness, which we accept for present purposes. Bellin does not dispute that Addison's disease is an objectively serious condition for purposes of the Eighth Amendment claim.) While imprisoned at Redgranite Correctional Institution, Soderlin was permitted to keep his hydrocortisone tablets in his cell and was responsible for requesting refills as needed. He sometimes went without the medication for several days because medical staff did not always process the refills efficiently.

In late August 2017, medical staff took eight days to refill Soderlin's prescription, leaving him without medication for three days. On the evening of the third day, September 6, he experienced an Addisonian crisis. He complained to Sergeant Zach Bays, a correctional officer who called the prison's medical unit. According to Soderlin's deposition testimony, Sergeant Bays told him that a nurse had replied: "It's not like [Soderlin] is gonna die without his medication for one night. Tell him that we will get it to him tomorrow." Soderlin's condition worsened overnight. The next morning, he was taken by wheelchair to the medical unit, where he received his medication.

Soderlin filed a grievance complaining about the repeated failure to timely refill his hydrocortisone prescription, and it was sustained. He then filed this action alleging that Nurse Bellin and other medical staff unconstitutionally and negligently allowed delays in his prescription refills and ignored his Addisonian crisis on September 6. At screening, *see* 28 U.S.C. § 1915A, the judge allowed Soderlin to proceed with a deliberate-indifference claim under the Eighth Amendment, 42 U.S.C. § 1983, and a medical-malpractice claim under Wisconsin law.

Soderlin asked the judge to recruit pro bono counsel, explaining that (1) he had no legal training; (2) his claims involved the complex issue of the defendants' state of mind and required expert medical evidence that he could not obtain; and (3) he was unable to investigate his claims because he had been transferred to a different prison. Soderlin renewed this motion 11 months later. The judge denied both requests, reasoning that Soderlin was capable of representing himself because his claims appeared to turn on the defendants' awareness of his condition and the lags in his

prescription refills, not complex medical questions, and because Soderlin had demonstrated that he could communicate clearly and cite relevant legal authorities and facts. Finally, the judge noted, Soderlin was now out of prison, making any investigation easier. A reconsideration motion followed, but the judge again declined to recruit counsel, explaining that Soderlin appeared competent based on his detailed motions and reiterating that his claims did not appear to turn on questions requiring expert medical testimony.

Meanwhile, the defendants moved for summary judgment on the deliberate-indifference and medical-negligence claims. The judge granted the motion; Soderlin challenges that ruling only as it relates to Nurse Bellin, so we limit our discussion accordingly. Bellin conceded that Addison's disease is a serious medical condition but attested that she was not aware that Soderlin was not receiving timely refills of his hydrocortisone medication. Soderlin responded that a reasonable jury could infer knowledge because Bellin answered Bays's call when Soderlin suffered the Addisonian crisis on September 6, 2017. In support he submitted a declaration attesting: "I personally witnessed [Bays] call [d]efendant Bellin. After Sergeant Bays called the nurse clinician, he personally told me that defendant Bellin told him that 'It's not like he is gonna die without his medication for one night. Tell him that we will get it to him tomorrow.'" He also submitted two other prisoners' declarations saying that they observed Bays calling the medical unit and reporting Soderlin's medical condition. Nurse Bellin replied that Bays's statement about what was said by the nurse who took the call was hearsay and thus inadmissible. Soderlin countered that Bellin's knowledge was in dispute because (1) other defendants admitted that Bellin was on duty on the night of September 6; and (2) the defendants had responded, "No dispute," to this proposed finding of fact: "Soderlin personally witnessed Bays call [d]efendant Bellin."

The judge held that Soderlin's attestation about Sergeant Bays's statement regarding what the nurse said during the call to the medical unit was inadmissible hearsay. The judge further concluded that no reasonable juror could find that Nurse Bellin acted negligently or with deliberate indifference because there was no admissible evidence that she knew on the evening of September 6 that Soderlin's hydrocortisone refill had been delayed and he was experiencing adverse effects of the lack of medication.

Our review of the judge's summary-judgment ruling is *de novo*. *White*, 48 F.4th at 861. To prove his claim for deliberate indifference against Nurse Bellin, Soderlin needed evidence from which a reasonable jury could conclude that she displayed

“something approaching a total unconcern” for his welfare by consciously disregarding a substantial risk of serious harm. *Stockton v. Milwaukee County*, 44 F.4th 605, 615 (7th Cir. 2022) (quotation marks omitted). The only evidence offered about Bellin’s state of mind was Soderlin’s account of Sergeant Bays’s statement about the content of his phone call to the medical unit on the evening of September 6—that is, Soderlin’s deposition testimony that Bays told him that the nurse who answered the call said that he would not die and could wait until morning. As the judge explained, that statement is hearsay because Bays, a nonparty, did not attest to it, and Soderlin offered it for the truth of what Bays said. *See* FED. R. EVID. 801(c); *MMG Fin. Corp. v. Midwest Amusements Park, LLC*, 630 F.3d 651, 656 (7th Cir. 2011). Soderlin does not contend that the statement is not hearsay or is covered by an exception to the hearsay rule. *See* FED. R. EVID. 801(d), 802.

Similarly, on the negligence claim, Soderlin offered no admissible evidence from which a reasonable jury could conclude that Nurse Bellin breached a duty to him and caused him harm. *See Gil v. Reed*, 535 F.3d 551, 557 (7th Cir. 2008). This claim too requires evidence that Bellin knew that Soderlin’s hydrocortisone refill had been delayed and he was experiencing symptoms from not having his medication. As we have explained, Bays’s statement to Soderlin about what was said by the nurse during the September 6 phone call is inadmissible hearsay. Soderlin personally observed Bays make the call for medical help, but he submitted no admissible evidence of what Bays said during that call or who received it. His attestation that he observed Bays “call Bellin” provided no foundation for his personal knowledge of who answered the call. Though the defendants did not dispute Soderlin’s proposed factual finding that he “witnessed Bays call [d]efendant Bellin,” there is no admissible evidence about what was said during the call. Finally, the attestations by two other prisoners that Bays talked about Soderlin’s “medical condition” during the call does not permit an inference that the nurse who answered the phone was specifically notified that Soderlin was having a medical crisis based on delayed medication. Accordingly, there is no evidence from which a reasonable jury could find that Nurse Bellin had the knowledge required to create a duty to act immediately (even assuming, but not deciding, that immediate action was necessary).

Next, Soderlin argues that the judge erroneously denied his motions for recruited counsel. We review for an abuse of discretion. *Pruitt v. Mote*, 503 F.3d 647, 658 (7th Cir. 2007) (en banc). In deciding whether to recruit counsel, judges must weigh the complexity of the pro se litigant’s claims against the litigant’s competence to represent himself. *Id.* at 655. The judge here applied the correct standard and reached a reasonable

decision. *See id.* at 658. He explained that Soderlin's claims were relatively simple because they turned on straightforward factual questions, not medical ones requiring expert testimony, and that Soderlin had demonstrated in his filings that he could communicate clearly and cite pertinent facts and law. We see no reason to second-guess that decision. *See id.*

Soderlin raises three arguments, but none is persuasive. He notes that he was transferred to a different prison after filing suit (making it more difficult to access evidence) and that another prisoner helped him with his filings. But Soderlin had already been released from prison when the judge addressed and denied his motions for recruited counsel. It was appropriate to assess his ability to litigate the case himself in light of his current circumstances and submissions to the court. Soderlin also argues that our caselaw *requires* the court to recruit counsel for prisoners whose claims involve medical issues or might require expert testimony. There are no such general rules. *See Olson v. Morgan*, 750 F.3d 708, 711–12 (7th Cir. 2014); *Romanelli v. Suliene*, 615 F.3d 847, 853–54 (7th Cir. 2010). We instead require case-by-case consideration. *Pruitt*, 503 F.3d at 655–56.

AFFIRMED