**NONPRECEDENTIAL DISPOSITION**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 May 19, 2023*
Decided May 25, 2023

***Before***

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2199

CHRISTOPHER A. STANTON,
*Plaintiff-Appellant*,

*v*.

ANDREW LIAW and JOHN GALIPEAU,
*Defendants-Appellees*.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:21-CV-89-JD

Jon E. DeGuilio,
*Chief Judge*.

**O R D E R**

Christopher Stanton, a prisoner at Westville Correctional Facility in Indiana, sued a doctor at the prison for alleged deliberate indifference to severe pain that

* 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).

Stanton believed was caused by an abdominal mass. The district court entered summary judgment for the defendants (who also included the warden, for purposes of potential injunctive relief). It concluded that a reasonable jury could not find that the doctor was deliberately indifferent because undisputed evidence showed that he repeatedly examined Stanton and sought the opinions of other medical professionals, none of whom identified a mass, and Stanton furnished no evidence that a competent doctor would have treated him differently. We affirm.

We recite the facts in the light most favorable to Stanton. *See Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). In November 2020, while incarcerated at Westville Correctional Facility, Stanton submitted three healthcare forms to request treatment for an extremely painful, growing mass in his abdomen. On November 16, the day he submitted the third form, he was examined by a nurse who noticed no visible or palpable mass. On November 24, Dr. Liaw saw Stanton for a regularly scheduled visit, and Stanton told him about the abdominal mass and his concern that it might be cancer. Stanton told Dr. Liaw that "multiple other nurses" felt the mass. Dr. Liaw examined Stanton and found no mass, observed that Stanton could ambulate without issue, and noted that his vital signs were within normal limits. He observed that Stanton "flinche[d] at minimal palpitation" of his abdomen, but "was not in acute distress." Further, Dr. Liaw told Stanton that his weight gain suggested he did not have cancer. Dr. Liaw noted that, though he initially planned to order laboratory tests, "at this point, [he] d[id] not see any clinical indication for labs."

Stanton had six more appointments with Dr. Liaw in 2021 (in January, February, April, June, July, and October). Stanton still believed a mass was growing in his abdomen, but each time, Dr. Liaw examined him and did not find any mass. During two of these appointments, the director of nursing and a nurse practitioner also examined Stanton, and neither found a mass. Dr. Liaw later sought a second opinion from another doctor, withholding information so that the assessment would be independent. The doctor determined that Stanton's self-reported mass was actually an abdominal muscle. Dr. Liaw noted in Stanton's medical record that he concurred: "[T]here is a raised area in the abdomen, but I consider it part [] of the normal anatomy and not an abnormality."

In February 2022, Dr. Liaw examined Stanton's abdomen once more and did not detect a mass. The same nurse practitioner separately examined Stanton's abdomen during that appointment and did not identify a mass. Finally, in March 2022, Dr. Liaw

met with Stanton, who complained again of a painful abdominal mass. That appointment ended without an exam when Stanton threatened Dr. Liaw with litigation.

Stanton sued Dr. Liaw, Wexford of Indiana, LLC (the company that employed Dr. Liaw), and other medical staff, alleging that they violated his Eighth Amendment rights by not treating his abdominal mass. *See* 42 U.S.C. § 1983. Stanton requested, in addition to damages, an injunction compelling the prison to provide an ultrasound or an MRI. He attached to his complaint an unauthenticated letter from a non-medical caseworker stating that he saw a "small knot or ball shaped object" on Stanton's abdomen.

The district court screened the complaint, permitting the Eighth Amendment claim against Dr. Liaw to proceed and adding as a defendant Westville's warden in his official capacity because Stanton sought injunctive relief. *See Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011) (per curiam) ("[T]he warden of [a prison] is a proper defendant since [the plaintiff] seeks injunctive relief."). The court also ordered briefing on Stanton's request for a preliminary injunction. After reviewing the briefs, it then denied this request and two later motions for preliminary injunctions, concluding that Stanton had not demonstrated a likelihood of success on the merits: he was examined multiple times by multiple providers, and no one found a mass or recommended further testing or treatment.

After discovery, the defendants separately moved for summary judgment, arguing that a reasonable jury could not find that Dr. Liaw disregarded a serious medical condition or that any ongoing violation needed to be enjoined. In support, they furnished evidence of Dr. Liaw's many examinations of Stanton, from which he never determined that Stanton had an abdominal mass, and Dr. Liaw's attestation that, in his professional opinion, Stanton had not required different treatment. In response, Stanton submitted three sworn statements that Dr. Liaw did nothing about his reports of constant and serious pain caused by an abdominal mass, such as prescribing pain medication or ordering diagnostic testing. Stanton also asserted that a caseworker and two nurses told him that they saw the mass, though no records corroborated the nurses' observations, and they did not submit declarations.

The district court granted the defendants' motions. It concluded that Stanton had not raised a genuine issue of material fact about whether Dr. Liaw deliberately disregarded a risk of serious harm to Stanton because undisputed evidence showed that Dr. Liaw examined Stanton multiple times, never observed an abdominal mass, and

sought second opinions from medical staff, who also did not find a mass. The court also concluded that Stanton's statement that nurses saw and felt the mass, and the unauthenticated letter from a caseworker that he saw the mass, were both inadmissible and, in any case, could show no more than disagreement among medical professionals.

Stanton appeals, arguing that a reasonable jury could find that Dr. Liaw was deliberately indifferent for failing to treat his mass and the severe abdominal pain it caused. Stanton insists that Dr. Liaw should have ordered laboratory testing, pain medications, and diagnostics, such as an endoscopy, ultrasound, or MRI. We review the district court's decision de novo. *Munson v. Newbold*, 46 F.4th 678, 681 (7th Cir. 2022).

To establish that Dr. Liaw was deliberately indifferent, Stanton must prove that the abdominal mass and associated pain created an objectively serious medical need and that Dr. Liaw knew of, but deliberately disregarded, that need. *See Farmer v. Brennan*, 511 U.S. 825, 835–36 (1994); *Munson*, 46 F.4th at 681. Because the warden concedes for the purposes of this appeal that Stanton created a triable dispute about whether he had a serious medical need (though Dr. Liaw does not), and resolving this question is unnecessary, we focus on whether Stanton could prove that Dr. Liaw had a "sufficiently culpable state of mind." *Munson*, 46 F.4th at 681. Here, that would mean that Dr. Liaw's response was so inadequate as to show that he failed to exercise his professional medical judgment. *Stewart*, 14 F.4th at 763.

The evidence would not permit a jury to find that Dr. Liaw was deliberately indifferent to Stanton's complaints of an abdominal mass. Dr. Liaw repeatedly examined Stanton's abdomen and sought input from multiple other medical professionals about what was there. Even if we considered Stanton's statements that a caseworker and nurses saw a mass, their disagreement with Dr. Liaw is not enough to show that his opinion resulted from deliberate indifference. *See Lockett v. Bonson*, 937 F.3d 1016, 1023 (7th Cir. 2019) (internal quotation marks and citation omitted) ("A disagreement between a prisoner and his doctor, or even between two medical professionals, about the proper course of treatment generally is insufficient, by itself, to establish an Eighth Amendment violation."). Indeed, when another doctor concluded that any raised area was anatomical, not a mass, Dr. Liaw agreed. Moreover, whether to order diagnostic testing is "a classic example of a matter for medical judgment." *Pyles v. Fahim*, 771 F.3d 403, 411 (7th Cir. 2014) (citing *Estelle v. Gamble*, 429 U.S. 97, 107 (1976)). Stanton presented no evidence that Dr. Liaw's view that diagnostic testing was unnecessary departed significantly from professional norms. *See id.*

We do not understand Stanton to be bringing an independent claim based on his abdominal pain, though failing to treat severe pain of unknown origin can be grounds for a claim of deliberate indifference. *See Hayes v. Snyder*, 546 F.3d 516, 526 (7th Cir. 2008). Even if he intended to bring such a claim, it would not survive summary judgment on this record. Stanton consistently attributed his pain to an abdominal mass that no medical evidence corroborated; his case is therefore distinguishable from cases like *Hayes*, in which a doctor barely treated a prisoner's severe pain that was later shown to be caused by a rare disease. *See id.* at 521. Although there is no evidence here that Dr. Liaw treated Stanton's pain with medication, a jury could not find deliberate indifference to the pain when Dr. Liaw consistently investigated the issue that Stanton complained about. Further, Stanton can only speculate that medication would have been an effective, or safe, treatment, and speculation cannot defeat summary judgment. *Gabb v. Wexford Health Sources, Inc.*, 945 F.3d 1027, 1034 (7th Cir. 2019).

As for the official-capacity claim against the warden, summary judgment was appropriate. Stanton did not support his claim of an ongoing violation of federal law warranting injunctive relief. *See Gonzalez*, 663 F.3d at 315.

Lastly, Stanton has filed certain motions that remain pending. To the extent he asks us to consider his reply brief as his response to both appellees' briefs, that request [Doc. 44] is GRANTED. His requests that we reconsider appointing counsel on appeal [Docs. 43, 44] are DENIED. Finally, Stanton filed a "motion to update the court" [Doc. 45], in which he asserts that, in January 2023, a nurse practitioner ordered more testing and treatment for his abdominal condition—a fact that he says shows that Dr. Liaw was deliberately indifferent. (His appellate brief also states that he is now being treated for chronic pancreatitis.) We cannot enlarge the record on appeal with new evidence; we must decide the appeal based on the record as it existed when the district court rendered its decision. *See Tuduj v. Newbold*, 958 F.3d 576, 579–80 (7th Cir. 2020); FED. R. APP. P. 10(e). If, as he implies, Stanton now has new evidence that Dr. Liaw caused an excessive delay in treatment or persisted in an ineffective course of treatment to Stanton's detriment, *see, e.g.*, *Goodloe v. Sood*, 947 F.3d 1026, 1031–32 (7th Cir. 2020), he must seek relief from the judgment in the district court. FED. R. CIV. P. 60(b).

AFFIRMED