

NONPRECEDENTIAL DISPOSITION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 July 11, 2023*

Decided July 12, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2409

FAIRLY W. EARLS,
Plaintiff-Appellant,

v.

SALAM SYED, et al.,
Defendants-Appellees.

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

Nos. 18-cv-332-wmc & 19-cv-117-wmc

William M. Conley,
Judge.

ORDER

In quick succession, Fairly Earls developed a skin infection and injured his ankle while incarcerated at Columbia Correctional Institution in Portage, Wisconsin. Earls alleged in two lawsuits that members of the prison's medical staff were deliberately indifferent to his serious medical needs under 42 U.S.C. § 1983, and negligent. 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. FED. R. APP. P. 34(a)(2)(C).

district judge consolidated the cases for briefing and disposition and entered summary judgment against Earls. We affirm.

Background

Because this appeal challenges a summary judgment, we recount evidence in the light most favorable to Earls, the non-movant, and give him the benefit of reasonable inferences. *See Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 457 (7th Cir. 2020).

1. Earls's Impetigo

On August 2, 2017, Earls reported significant chest and back pain, so staff in Columbia's Health Services Unit sent Earls to the emergency department of a nearby hospital. Records from this visit describe his skin as "normal" and "[n]egative for injury, rash, and discoloration." He was soon discharged with instructions to take ibuprofen for his pain and return if his symptoms worsened. Back at Columbia that day, nurse Timothy Deters evaluated Earls twice. The first time, Deters told Earls to rest for the day; the second, they discussed Earls's continuing lower back pain and apparent heartburn. Deters gave Earls ibuprofen and an antacid. Deters's notes from these meetings do not reflect any complaints from Earls about his skin. And, at a follow-up visit to the health unit two days later, a different nurse noted that Earls's skin was "intact[,] warm, dry, [and] normal in color."

Earls submitted health services requests reporting a skin problem on August 6 and again the next day. In both requests, he mentioned that he was developing "blood blisters" on his hands. Salam Syed, a prison doctor, examined him on August 9. Syed diagnosed scabies, an itchy skin condition caused by burrowing, parasitic mites. Syed prescribed antibiotics to kill the mites and acetaminophen for pain.

Days later, on August 14, Earls returned to the Health Services Unit. A nurse observed that his hands were red, warm, scabbed, and had white spots. The nurse sent Earls to the hospital, where staff noted "bites" around his fingers. He was diagnosed with bullous impetigo—a bacterial infection that affects the skin and causes blisters. (Syed later attested that scratching scabies-infected skin can cause impetigo.) A hospital physician listed "parasite infection" in the possible causes of Earls's condition. Earls received an antibiotic injection and a prescription for oral antibiotics.

That treatment regimen worked. At consecutive visits over the next three days, Syed noted improvement in Earls's skin. Syed met with Earls on August 23 and reported that his skin condition was resolving with no signs of cellulitis or swelling. On September 6, Syed concluded that Earls's skin condition was essentially resolved.

2. Earls's Ankle Injury

In his verified complaint, Earls asserted that his left ankle was broken while he was being transported "to and from" the hospital on August 2. The hospital records do not mention an ankle injury; they reflect that Earls had "no difficulty" walking. Earls swears that he told Deters of the ankle injury during both of their meetings on August 2, and further that he sent a health services request about it on August 3. No records corroborate these statements.

A nurse who evaluated Earls on August 4 recorded nothing about an ankle injury. In a health services request from later that day, Earls said that he was, "[s]till in severe pain, can't walk. Haven't been able to eat in dining room in three day[s], fever and sweats. (Follow up on emergency trip to hospital)." Nurse Teresa Gaier responded that Earls had just been evaluated, that he had an upcoming doctor visit, and that he should tell medical staff if his condition worsened. Gaier later attested that, based on the request, which did not refer to an ankle injury, she believed that Earls was having the same chest or back pain that had prompted his recent emergency room visit.

Over the next few days, Earls submitted two health services requests reporting chronic chest and back pain; he did not mention an ankle issue. Earls also met with Syed and Gaier on August 9 about his skin condition. There is no evidence that he complained about his ankle then, and Syed and Gaier both attest that he did not.

Earls's first documented complaint of a "broken leg/ankle" appears in a health services request from August 11. Nurse Denise Valerius responded that Earls did not need to be seen because he had been to the Health Services Unit two days earlier, a corrections officer saw him walking around, and he had a medical visit scheduled for August 14 (the visit that prompted a nurse to send Earls to the emergency room for his blistering skin). Neither the prison nurse's notes nor the hospital records from August 14 mention an ankle injury, and the latter note that Earls had a steady gait, "intact" range of motion "in all extremities[,] and "[n]o other complaints at this time."

On August 16, Earls again returned to the Health Services Unit, where Deters saw that Earls's ankle was wrapped in an ace bandage. Deters examined the ankle and saw some swelling but no discoloration or deformity. Deters also noted that Earls was bearing weight and walking well. So, Deters believed that no further treatment was necessary. Earls had several follow-up appointments over the next few days for his skin condition; the records from these visits do not mention any ankle problems.

Syed, the doctor, first learned of Earls's ankle problem during a visit on August 23. He examined the ankle, noting a full range of motion and minimal swelling. He did not think that the ankle was seriously injured, but he prescribed ibuprofen.

Records show that Gaier next saw Earls on September 1 regarding a knee injury. The records do not mention Earls's ankle. Later that day, Gaier responded to another health services request from Earls, this time about the ankle, and she stated simply that he had been seen already. Earls swears that the earlier interaction never occurred.

When Syed next saw Earls on September 6, Earls complained again about his ankle, and Syed referred him for X-rays. The outside radiologist took images on September 12, and concluded that they showed no sign of a break. Syed reviewed the radiology report and, trusting that the radiologist had correctly read the X-rays as normal, concluded that no follow-up was needed. Earls says that the images conspicuously show a broken ankle and that they are clearer on the DVD that the defendants failed to submit than on the printouts in the record.

Earls filed separate lawsuits about the treatment of his skin and ankle problems. After screening the complaints under 28 U.S.C. § 1915A, the district judge allowed Earls's deliberate indifference and medical negligence claims about Syed's and Deters's responses to his impetigo, as well as deliberate indifference and medical negligence claims against Syed, Deters, Gaier, and Valerius for their treatment of his ankle.

Because of the overlapping defendants and facts, the judge granted the defendants' motion to consolidate the cases for discovery and disposition. Eventually, the judge entered summary judgment for the defendants, concluding that Earls presented insufficient evidence to raise a genuine dispute of material fact on any claim.

Discussion

Earls argues that, in granting summary judgment for the defendants, the district judge impermissibly assessed his credibility and ignored genuine disputes of material fact. We review a summary judgment decision de novo. *Donald*, 982 F.3d at 457.

As an initial matter, Earls suggests that the judge ruled against him after determining that he was not credible, in violation of summary-judgment standards. But the judge did no such thing. In a footnote, the judge restated—and rejected—defendant Deters’s argument that Earls made up an ankle injury. Earls cites “other credibility determinations” but these are merely the judge’s descriptions of the medical records. To the extent Earls did not call the records into dispute with admissible evidence, but only with his disagreements, the judge’s descriptions of their contents were appropriate. *See McGee v. Adams*, 721 F.3d 474, 482 (7th Cir. 2013).

Substantively, Earls first contends that he raised genuine disputes of material fact on his Eighth Amendment claims. To support those claims, Earls needed evidence that the defendants were “deliberately indifferent” to an “objectively serious medical condition.” *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016). Medical personnel are deliberately indifferent if their treatment departs so substantially from accepted professional standards as to demonstrate that they did not exercise professional judgment at all. *Brown v. Osmundson*, 38 F.4th 545, 551 (7th Cir. 2022).

Earls contends that the district judge impermissibly weighed evidence to conclude that Syed did not misdiagnose his skin condition. He relies on the records from his August 14 hospital visit, which refer to his previous diagnosis of, and unsuccessful treatment for, scabies—not impetigo. But the judge recognized that Syed first diagnosed scabies and concluded that this evidence was insufficient to raise a dispute about the doctor’s deliberate indifference to Earls’s condition. No evidence impugns the initial scabies diagnosis nor Syed’s opinion that Earls’s impetigo likely developed from infected scabies blisters. The hospital physician did not disagree, noting that a “parasite” could have led to the impetigo, and the nurse observed “bites” around Earls’s thumbs, which is also consistent with Syed’s view. In any event, evidence of a misdiagnosis, were there any, would not support Earls’s contention that Syed was deliberately indifferent. Nothing suggests that Syed’s diagnosis and treatment plan were “such a substantial departure from accepted professional judgment” that no reasonable doctor would have thought Earls had scabies. *See Donald*, 982 F.3d at 457.

With respect to his claims about his ankle injury, Earls contends that the judge should not have inferred from the August 2 hospital records, which do not mention an ankle injury, that he didn't break his ankle on August 2. He now says that those records could not have corroborated his ankle injury because he incurred it on his way back from the hospital. This contradicts his sworn response to the defendants' proposed statement of material facts, which said that he reported the ankle injury at the hospital.

Regardless, Earls never pointed to evidence that he told any defendant except Deters and Gaier about an ankle injury before his August 11 health services request. So, before then, no one else could have disregarded a known risk of substantial harm. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). As to Gaier, Earls's August 4 health services request said only that he couldn't walk and was "[f]ollow[ing] up on [his] trip to [the] hospital" (which was for chest pain). Earls has no evidence to dispute that Gaier understood his request to concern chest pain, and Gaier could not be deliberately indifferent to an ankle injury of which she was unaware. *See id.* Moreover, Gaier's response did not demonstrate "a total unconcern" for Earls's pain, *see Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012), because she confirmed that he had just been seen by medical staff and had been prescribed pain medication.

As to Deters, there is no evidence that this nurse consciously disregarded a need for treatment, even if Earls told him about the ankle on August 2, because the record contains no evidence of an objectively serious ankle injury. *See id.* at 834. All the evidence is to the contrary: The X-rays were negative, he was repeatedly seen walking without difficulty, and no one who examined his ankle saw signs of serious injury. This also dooms any claim based on Gaier's response to the September 1 health services request, as well as any claim against Valerius, if we construe Earls to argue that her reliance on the report that he had been seen walking amounted to conscious disregard.

To respond to the dearth of evidence of a serious injury, Earls asks us to review the X-rays and reject the radiologist's opinion that they show no break or injury. But only the competing opinion of a medical professional could raise a factual dispute about whether Earls had a broken ankle. *See Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010). (Certainly the images do not show a condition "so obvious that even a lay person would perceive the need for a doctor's attention." *See id.*) And Syed was entitled to rely on the specialist's expertise. *See Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006).

Finally, regarding his negligence claims, Earls again argues generally that the district judge impermissibly weighed evidence. But he failed to offer any evidence

establishing the medical standard of care, without which he cannot show that any defendant breached that standard. *See Carney-Hayes v. Nw. Wis. Home Care, Inc.*, 699 N.W.2d 524, 537 (Wis. 2005). Nor did Earls offer evidence that any defendant's action or inaction, as opposed to his medical issues themselves, caused him harm.

We have considered Earls's remaining arguments, but none has merit.

AFFIRMED