

NONPRECEDENTIAL DISPOSITION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 August 3, 2023*

Decided August 3, 2023

Before

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2970

MICHAEL SELVIE,
Plaintiff-Appellant,

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

v.

No. 3:20-cv-00328-GCS

MOHAMMED SIDDIQUI, et al.,
Defendants-Appellees.

Gilbert C. Sison,
Magistrate Judge.

ORDER

Michael Selvie, incarcerated in an Illinois prison, had medical problems in both feet. He sued two treating doctors and an administrator, alleging that, by denying him bunion surgery and offering what he considered to be ineffective treatment for his ganglion cyst, they were deliberately indifferent to his medical needs. The district court

* 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).

ruled against Selvie at summary judgment. Because no reasonable jury could find that the defendants acted with deliberate indifference, we affirm.

While an inmate at Menard Correctional Center, Selvie experienced multiple foot-related medical problems. In early 2015, X-rays revealed that he had a nodule on the sole of his right foot, but Dr. John Trost noted that the imaging was within normal limits. He prescribed ibuprofen and referred a request for a podiatry evaluation to collegial review, which is the process through which treating doctors consult with non-examining physicians at the prison's healthcare services contractor (Wexford Health Sources, Inc.). During that review, Dr. Stephen Ritz, a Wexford administrator, recommended that Selvie begin a weight-loss program, take ibuprofen as needed, and wear non-custom insoles. A few months later, Dr. Trost again saw Selvie, who reported tightness in his right foot, though the nodule had not grown. A few months after that, Dr. Trost noted a painful mass on the sole of Selvie's foot and submitted another referral to podiatry, which was approved after collegial review.

Selvie saw an outside podiatrist who diagnosed him with a plantar fibroma on his right foot and bunions on both feet. The podiatrist recommended surgical excision of the fibroma and advised that the bunions be addressed with surgery at the same time. For the bunions, the podiatrist also suggested that Selvie wear custom orthotics. In response to the podiatrist's assessment, Dr. Trost submitted a collegial referral for the fibroma, and Dr. Ritz approved surgery. But Dr. Trost and Dr. Ritz each concluded, in April 2016, that bunion surgery was not medically necessary.

Starting in 2017, Selvie also complained of left-foot pain. Dr. Mohammed Siddiqui, a physician who became permanently employed at Menard in June of that year, observed a nodule on the top of Selvie's left foot and concluded that it was likely a lipoma (a benign fatty lump). About seven months later, Dr. Siddiqui noted that the lump had grown, but he still suspected it was a lipoma. He saw Selvie again in August 2018 and, after Selvie demanded surgery, referred him for a general surgery consultation, stating in the referral form that the lump was probably a lipoma. During collegial review that month, Dr. Ritz concluded that monitoring for changes in the lump would be most appropriate. Selvie later met with a different doctor who referred him for a podiatry consult. His case was presented for collegial review several more times, and in May 2019, when the referral forms first mentioned that the lump was painful, Dr. Ritz approved the consult.

The podiatrist diagnosed Selvie with a ganglion cyst, aspirated it, and administered a steroid injection. The cyst refilled quickly, and Dr. Ritz approved a podiatry follow-up. Dr. Siddiqui later referred Selvie to an outside provider for removal

of the cyst, and Dr. Ritz approved another follow-up to podiatry and a referral for an MRI. In 2021, after filing suit, Selvie had surgery to remove the cyst.

Selvie sued Drs. Trost, Ritz, and Siddiqui under 42 U.S.C. § 1983 for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. He alleged that they did not provide adequate treatment for his bunions or the ganglion cyst on his left foot, resulting in ongoing pain and permanent nerve damage. A district judge screened the case, *see* 28 U.S.C. § 1915A, and allowed Selvie to proceed on a claim against the three doctors regarding his bunions and a claim against only Dr. Ritz about his ganglion cyst. The parties then consented to proceed before a magistrate judge.

The defendants moved for summary judgment. They argued that Selvie produced no evidence that Dr. Siddiqui was involved in treating his bunions or that bunion surgery was medically necessary, and that the record showed that Dr. Trost and Dr. Ritz followed an appropriate, conservative plan of care. They added that Dr. Ritz lacked reason to believe that medical intervention for Selvie's ganglion cyst was necessary until he learned it was causing pain, and so the delay in approving the podiatry consult was not out of deliberate indifference. Selvie responded that the cyst caused "excruciating" pain but he was subjected to a constant "back and forth" of referrals and collegial review rather than provided with necessary treatment.

The court granted the defendants' motion for summary judgment. It deemed Selvie's ganglion cyst and bunions to be objectively serious medical conditions. But, the court determined, neither Dr. Trost's nor Dr. Ritz's conduct departed substantially from accepted professional standards. They continually evaluated Selvie's feet, took X-rays, prescribed medication for his pain, recommended that he lose weight and wear orthotic insoles, and referred him to a podiatrist multiple times. Considering the totality of care, the court explained, the fact that they denied bunion surgery could not in itself give rise to an inference of deliberate indifference. (The court further explained that there was no evidence that Dr. Siddiqui was involved in the treatment or collegial review process for Selvie's bunions.) As for Selvie's ganglion cyst, when Dr. Ritz was first consulted in August 2018, he was told that the lump was likely a lipoma, so he opted for a conservative approach: monitoring the mass. He was not consulted again until May 2019, when he promptly approved a podiatry consult, and he later approved podiatry follow-ups and an MRI referral. Thus, the court determined, Dr. Ritz was not deliberately indifferent.

On appeal, Selvie challenges the summary judgment ruling on his deliberate indifference claims. We review the decision *de novo* and construe the evidence in the light most favorable to Selvie. *See Stockton v. Milwaukee County*, 44 F.4th 605, 614

(7th Cir. 2022). We agree with the district court that no reasonable jury could conclude, on this record, that the defendants were deliberately indifferent to an excessive risk to Selvie's health. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 662 (7th Cir. 2016).

First, the decision to forgo surgery for Selvie's bunions is insufficient to raise a genuine issue of material fact about whether any of the three doctors had a culpable state of mind. True, a podiatrist said that surgery was the preferred treatment option, but "[a] difference of opinion among doctors is not sufficient evidence to establish deliberate indifference." *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763 (7th Cir. 2021). Moreover, Selvie did not present evidence that Dr. Ritz, who recommended weight loss and non-custom insoles, or Dr. Trost, who prescribed pain medication, made a treatment decision that was blatantly inappropriate or so far afield of accepted medical standards to raise an inference that it was not based on a medical judgment. *See id.* (To the extent that Selvie suggests that the defendants never implemented a weight-loss plan or provided him with adequate insoles, there is no evidence that Dr. Ritz or Dr. Trost were responsible for or even aware of any gap in treatment.) And the record contains no evidence to support Selvie's suggestion that Dr. Ritz or Dr. Trost denied the bunion surgery because it was too costly. As to Dr. Siddiqui, the district court correctly noted that the uncontested evidence establishes that he was not involved in treating Selvie's bunions. He was not permanently employed at Menard until June 2017 (over a year after Dr. Trost and Dr. Ritz decided against surgery for the bunions), and no medical records show that he treated Selvie's bunions as a traveling doctor before then. Because deliberate indifference requires that a defendant be aware of and ignore a risk of serious harm, Siddiqui could not have been deliberately indifferent. *See id.* at 763.

Selvie also did not raise a genuine issue of material fact regarding Dr. Ritz's response to his ganglion cyst. He argues that Dr. Ritz was aware of Selvie's pain in August 2018 and should have approved an outside podiatry consultation about that condition long before May 19, 2019. But the record does not reflect that Dr. Ritz was told before then that the lump was painful, so his decision to simply monitor the mass, believed to be a lipoma, does not give rise to an inference of deliberate indifference. Further, Selvie provided no evidence that the course of treatment Dr. Ritz suggested was outside the bounds of accepted medical standards, or that Dr. Ritz, who did not examine Selvie directly or see the cyst, knew or should have known that Selvie needed more urgent care for the condition. *See id.* at 763; *Perez v. Fenoglio*, 792 F.3d 768, 778 (7th Cir. 2015). Therefore, a reasonable jury could not find for Selvie on his claim about the cyst.

AFFIRMED