

NONPRECEDENTIAL DISPOSITION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 16, 2024*

Decided February 16, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1907

ANTHONY MOREHEAD,
Plaintiff-Appellant,

v.

ANGELA THOMPSON, et al.,
Defendants-Appellees.

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

No. 20-cv-1190-bhl

Brett H. Ludwig,
Judge.

ORDER

Anthony Morehead, a Wisconsin prisoner whose Achilles injury was treated without surgery, appeals the summary judgment decision rejecting his claim that his medical providers acted with deliberate indifference toward his medical needs. *See* 42 U.S.C. § 1983. Because the district court was correct that no reasonable jury could find any defendant deliberately indifferent, we affirm.

* 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).

We present the facts from the record in the light most favorable to Morehead and draw all reasonable inferences in his favor. *See Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 457 (7th Cir. 2020). In June 2018, Morehead injured his left ankle while playing basketball. At that time, he was examined by Dr. Adebola Ibirogbra (not a defendant), who prescribed pain medication, ice for two weeks, and a controlled-ankle-motion boot for six weeks. Dr. Ibirogbra also ordered an x-ray. After the x-ray showed no signs of fracture or dislocation, registered nurse William Borgen ordered Morehead to continue the prescribed treatment.

Morehead continued to experience immense pain, and so the next month Dr. Ibirogbra ordered an MRI. The test revealed a ruptured Achilles tendon, prompting Dr. Ibirogbra to refer Morehead to an external orthopedic surgeon, Dr. Eric Nelson.

Dr. Nelson soon examined Morehead and noted that his Achilles had begun the natural healing process and that scar tissue had started to form. In Dr. Nelson's view, once significant scar tissue begins to form, there is no benefit to repairing the injury surgically. Dr. Nelson also noted that, in his experience, prisoners tend to have higher rates of surgical-site infection after surgery than patients outside of prison, and so he proposed a conservative treatment plan that consisted of a short-leg cast.

At a follow-up examination three weeks later, Dr. Nelson noted that Morehead's Achilles was healing as expected. Based on the examination, Dr. Nelson removed Morehead's cast and recommended physical therapy. Throughout therapy, Morehead repeatedly complained about pain in his left ankle as well as increased pain while standing and walking. Physical therapist Robert Rhodes, who noted Morehead's continued progress, explained to Morehead that he should expect some discomfort during his exercises.

Dr. Nelson examined Morehead again one month later, and observed that Morehead had mostly recovered full range of motion in the ankle, and that the foot had regained full strength. Dr. Nelson recommended that Morehead continue physical therapy.

Over the next five months, however, Morehead experienced pain, and he filed multiple health service requests. He was seen by nurses who encouraged him to continue with the conservative plan of care, including physical therapy.

In response to Morehead's continued complaints of pain, Advanced Nurse Practitioner Christine Burnett ordered an MRI on his left ankle. Dr. Nelson reviewed the MRI and concluded that Morehead's Achilles was healing properly. But noting an "obvious" difference in the size of Morehead's calf muscles, Dr. Nelson recommended continued conservative treatment and physical therapy.

In the meantime, Morehead had sent a letter to the prison's health-services manager Angela Thompson, requesting surgery to repair his Achilles. (It is unclear from the record whether Thompson denied Morehead's request, but in her role as health-services manager, she was not authorized to override the treatment decisions of Morehead's physicians.)

Morehead's continued complaints of pain in his ankle led to a telemedicine appointment with Dr. Nelson in October 2020. Dr. Nelson concluded that Morehead's ongoing complaints of pain related to incomplete functional recovery and incomplete rehabilitation.

In late 2021, Morehead underwent a third MRI on his ankle, which showed "remote extensive tearing of the Achilles tendon." Although the reviewing doctor (an orthopedic surgery resident, not Dr. Nelson) agreed to place a request for surgery, he warned Morehead that the risk of wound infection would be high, and that surgery would do little to resolve his pain. No operation, however, ever took place.

Dissatisfied with the results of conservative treatment despite his continued complaints of pain, Morehead sued Dr. Nelson and prison medical staff for deliberate indifference, *see* 42 U.S.C. § 1983, and violation of Wisconsin negligence law. Because of the conservative treatment, Morehead states, he now has a permanent disfigurement that requires him to use crutches and a medical boot to perform daily activities. In Morehead's view, if a third MRI had been ordered sooner, it would have shown that his Achilles did not heal properly.

The district court entered summary judgment for the defendants, stating that no reasonable jury could conclude that they were deliberately indifferent toward Morehead's Achilles injury. With regard to Dr. Nelson, the court explained that Morehead did not produce evidence that the doctor used anything but accepted professional judgment when recommending nonsurgical treatment. As for the other medical staff members, the court found no dispute that they implemented Dr. Nelson's

treatment plan and lacked the authority to override a doctor's medical decision by ordering surgery themselves. The court relinquished supplemental jurisdiction over the state-law claim.

On appeal, Morehead primarily maintains that Dr. Nelson acted with deliberate indifference toward his Achilles injury by recommending conservative, nonsurgical treatment despite his repeated and persistent complaints of pain. But as the district court correctly explained, no reasonable jury could conclude on this record that Dr. Nelson's treatment was deliberately indifferent. Dr. Nelson's medical judgment is entitled to deference unless "no minimally competent professional would have responded similarly under those circumstances," such that the treatment he recommended was "blatantly inappropriate." *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). Morehead points to no evidence that calls into question Dr. Nelson's recommendation to pursue nonsurgical treatment based on his opinion that the benefits of surgery on an Achilles that had started to heal were outweighed by the serious risk of infection. And even though the surgical resident later placed a request for surgery, he cautioned Morehead of the risk of wound infection and the likelihood that his pain would not be resolved.

Morehead maintains, similarly, that his treating nurses, physical therapist, and the health-services manager acted with deliberate indifference by continuing conservative treatment despite his complaints of pain. But here, too, no reasonable jury could find that the medical staff were deliberately indifferent to Morehead's medical needs. They responded to Morehead's complaints of pain by ordering MRIs (three total), prescribing pain medication as needed, and arranging for him to receive orthopedic shoes. And they appropriately deferred to Dr. Nelson's recommendation to continue conservative treatment because Morehead's Achilles was healing and regaining strength through physical therapy. Aside from Morehead's desire for surgery, nothing in the record suggests that Morehead's course of treatment was so woefully inadequate to suggest a reckless disregard for his medical needs. *See Eagan v. Dempsey*, 987 F.3d 667, 695 (7th Cir. 2021).

Next, Morehead argues that the district court abused its discretion by relinquishing supplemental jurisdiction over his state-law claim. But when no federal claims remain in advance of trial, we presume that the district court will relinquish supplemental jurisdiction over the state-law claims. *RWJ Mgmt. Co. v. BP Prods. N. Am., Inc.*, 672 F.3d 476, 479 (7th Cir. 2012). Indeed, we reverse such a decision "only in

extraordinary circumstances.” *Id.* at 480. Here, Morehead does not point to any extraordinary circumstances to undermine the district court’s conclusion.

AFFIRMED