

NONPRECEDENTIAL DISPOSITION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 June 25, 2024*

Decided July 1, 2024

Before

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2866

DAVID MACKEL,
Plaintiff-Appellant,

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

v.

No. 20-cv-4013

SHAN JUMPER, et al.,
Defendants-Appellees.

Colleen R. Lawless,
Judge.

ORDER

David Mackel, a civil detainee at Rushville Treatment and Detention Facility, sued several facility officials for violating his constitutional rights by denying him mental-health treatment and engaging in retaliation. *See* 42 U.S.C. § 1983. The district court entered summary judgment for the defendants on Mackel’s claims. Because Mackel has not offered evidence sufficient for a reasonable jury to find in his favor, 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 recite the facts and draw all reasonable inferences in the light most favorable to Mackel, the party opposing summary judgment. *See Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 661 (7th Cir. 2016). The district court summarized the facts in extensive detail, but we limit our summary to those facts most relevant to Mackel's arguments on appeal.

Mackel has been detained since 2000 at Rushville under the Illinois Sexually Violent Persons Commitment Act. This act allows for commitment of individuals "until such time as the person is no longer a sexually violent person." 725 ILCS 207/1; 207/40(a). The act defines "sexually violent person" to include someone, like Mackel, who has a conviction for sexual violence and suffers from a mental disorder that makes further acts of sexual violence "substantially probable." 725 ILCS 207/5(f).

Rushville staff take a phased approach to treating detainees' mental disorders. Treatment teams evaluate detainees and work with them to tailor a master-treatment plan, which identifies objectives that the detainee must accomplish to progress to the next phase of treatment, eventually culminating in release. The master plan also identifies group-therapy courses designed to help the detainee attain his near-term objectives. But successful completion of such courses does not guarantee progression to more advanced courses or treatment phases. (For instance, the treatment team may compel a detainee to repeat certain treatments if it believes he has backtracked on his past objectives.)

While detainees undergo treatment, their living arrangements are initially determined by a rooming committee. The committee assigns roommates based on several factors, including detainees' preferences, the likelihood that a rooming arrangement would impede detainees' treatment, and the likelihood that the arrangement would lead to safety concerns.

The leader of Mackel's treatment team is Dr. Paula Lodge, who is also a member of the rooming committee. Mackel's treatment has progressed in fits and starts, a fact he attributes to the defendants' intent to keep him detained indefinitely. His attendance at various group-therapy courses at times has been spotty, though he says his absences were justified. At other times, he has withdrawn his consent to treatment entirely. When he has consented to treatment, his participation has received mixed reviews from group facilitators. Suffice to say, he has not progressed through the phases of treatment as he thinks he deserves. He previously filed at least one lawsuit—in 2013—relating to his treatment, and he has testified in this case that Lodge told him—he does not say when—that he would never progress as long as he kept filing lawsuits.

Mackel filed this lawsuit in 2020, raising constitutional claims about his treatment at the facility. Judge Myerscough screened his complaint under 28 U.S.C. § 1915 and granted him leave to proceed on a Fourteenth Amendment due process claim and a First Amendment retaliation claim. Both claims concerned allegations that the defendants had failed to advocate for his progression through therapy groups. Mackel asserted the due process claim against all defendants and the retaliation claim against only Dr. Lodge, who, he alleged, used her influence as his treatment-team leader to retaliate against him for filing his 2013 lawsuit.

Six months after Mackel filed his suit, Judge Myerscough allowed him to supplement his complaint with an additional claim that Lodge—in her rooming-committee role—retaliated against him by forcing him to live with a black detainee (“Resident B”), who he says sexually assaulted him. (Mackel had previously expressed that he did not want to room with any black people.) He also asserted a claim based on Lodge’s failure to protect him from the sexual assault.

Discovery ensued, and the defendants moved for summary judgment. With respect to Mackel’s Fourteenth Amendment claim, they argued that he had not offered evidence sufficient to show that their treatment decisions substantially departed from professional standards. And both of his retaliation claims failed, the defendants added, because it was undisputed that the decisions to hold back Mackel and assign him to room with Resident B would have occurred regardless of any retaliatory intent. In a statement of facts, *see* C.D. ILL. R. 7.1(D)(2)(b), Mackel generally disagreed with many of the defendants’ facts, but he did not file a brief.

Judge Lawless, to whom the case was reassigned, granted the defendants’ motion for summary judgment. On Mackel’s Fourteenth Amendment claim, the court explained that the defendants’ treatment decisions were entitled to deference, and Mackel had not overcome that deference through evidence suggesting that the decisions violated professional standards. As for his claims against Lodge, the court concluded that Mackel could not make out a *prima facie* case of retaliation under the First Amendment. He had not identified an actionable deprivation because he had no right “to receive a *preferred* course of mental health treatment,” nor to choose his roommate’s race, and his rooming assignment did not deprive him of any privileges he had in his prior assignment. Even if Mackel could show a deprivation, the court added, he could not show that it was motivated by retaliation: Not one of Mackel’s treatment providers had opined that he was ready to progress to the next stage of treatment, and no evidence suggested that Lodge (or anyone else on the rooming committee) had

improper reasons for assigning him to room with Resident B. The court also noted that Mackel's 2013 lawsuit was too far removed from the complained-of conduct to create an inference that Lodge intended to retaliate against him.

On appeal, Mackel first maintains that the defendants, in failing to advocate for his progression through treatment groups, denied him adequate care. But treatment decisions are deemed "presumptively valid," *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982), and Mackel has not offered evidence from which a reasonable jury could conclude that the defendants' decisions departed so substantially from professional standards that they demonstrated a lack of professional judgment. *See Johnson v. Rimmer*, 936 F.3d 695, 707 (7th Cir. 2019) (citing *Youngberg*, 457 U.S. at 323). Mackel further argues that his treatment must have been substandard because it was "carried out by unlicensed and untrained workers," but he did not preserve this argument by raising it first in the district court. *See Hildreth v. Butler*, 960 F.3d 420, 425 n.3 (7th Cir. 2020). Regardless, he points to no evidence to suggest that the defendants lack the requisite licensing or training to provide treatment for his mental-health conditions.

With respect to his retaliation claims, Mackel challenges the district court's conclusion that he failed to establish a prima facie case. To establish a prima facie case of retaliation, Mackel needed evidence sufficient for a reasonable juror to find that (1) he engaged in First Amendment activity; (2) he suffered a deprivation likely to deter such activity in the future; and (3) the First Amendment activity was "at least a motivating factor" in the deprivation. *See Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020) (citations omitted).

We begin with his retaliation claim regarding his mental-health treatment. Focusing on the second prong of the prima facie case, he argues that the deprivation he suffered is the lack of an opportunity to earn his release—an opportunity that, he says, Lodge squelched by refusing to advocate for his progression to more advanced group-therapy courses. As he understands it, her refusal to advocate on his behalf means that "he will never be eligible for release."

But Mackel's treatment records show that he has received the opportunity to earn his release. He has received offers to attend various group-therapy courses—including courses not facilitated by Lodge—that were recommended to accomplish the objectives listed in his master plan, but he has turned those offers down. At other times, he has withdrawn his consent to treatment altogether. Consequently, none of his treatment providers believes he has demonstrated enough success in treatment to progress toward his eventual release. And he does not point to evidence in the record to

undermine the providers' professional opinions. *Milliman v. County of McHenry*, 893 F.3d 422, 432 (7th Cir. 2018).

Relatedly, he does not point to evidence in the record to show that he could meet the third prong of the prima facie test for First Amendment retaliation—that his First Amendment activity was a motivating factor in the deprivation. He insists that he identified a motivating factor by spotlighting Lodge's statement that he would "never progress" because of his lawsuits, but that decision—the record shows—rests with Mackel's entire treatment team, and Mackel agreed during the district court proceedings that the team's decision was "made in an effort to assist him in being successful in treatment." Moreover, nothing in the record suggests that Lodge could override the team's decision, and Mackel's assertion that she exerted her influence over the other members of the team is unsupported and too speculative to defeat summary judgment. *See Carmody v. Bd. of Trs. of Univ. of Ill.*, 893 F.3d 397, 401–02 (7th Cir. 2018).

Lastly, Mackel challenges the district court's conclusion that he lacked sufficient evidence to show that Lodge acted with retaliatory intent when assigning his room to him. He argues, specifically, that the court overlooked the "suspicious timing" of the room assignment—the rooming committee had assigned him to live with Resident B in June 2020—just 6 months after he filed this lawsuit.¹ But even if we accept Mackel's view that the assignment's timing was suspicious, a juror could not reasonably find that the assignment was retaliatory because the defendants offered uncontroverted evidence to show that the assignment decision was based on several non-retaliatory factors, such as the likely effects on treatment and safety. *See Milliman*, 893 F.3d at 431 (citation omitted).

AFFIRMED

¹ The district court and the defendants used "over 5 years" rather than 6 months as a benchmark to measure the time between Mackel's lawsuits and the alleged deprivation. This figure, however, overlooks the timing of Mackel's room assignment in relation to *this* lawsuit.