NONPRECEDENTIAL DISPOSITION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 September 20, 2024*
Decided September 20, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1716

SHAUN J. MATZ,
Plaintiff-Appellant,

v.

GABRIEL GALLOWAY,
Defendant-Appellee.

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

No. 18-cv-748-wmc

William M. Conley,
Judge.

O R D E R

Shaun Matz, a Wisconsin prisoner, sued attorney Gabriel Galloway, alleging that Galloway's malpractice caused Matz to lose his civil-rights suit. Because Matz did not raise a genuine issue of material fact about whether he would have prevailed on any of

* 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).

his civil-rights claims but for Galloway's errors, the district court entered summary judgment for Galloway. We affirm.

In 2010, Matz filed a complaint under 42 U.S.C. § 1983, alleging that fifteen officials at Columbia Correctional Institution violated his rights under the Eighth Amendment by failing to prevent him from engaging in self-harm, administering inadequate mental-health treatment, housing him in conditions that they knew would exacerbate his mental illness, and transferring him to another prison that worsened his self-harming behavior. The district court recruited Galloway to represent Matz in the lawsuit.

During discovery, Galloway contacted numerous medical professionals in Wisconsin and other states and found one doctor willing to serve as a medical expert. A few months later, Galloway reported to the court at a telephone conference that the doctor had reviewed Matz's medical records but declined to author a report. Galloway did not secure another expert.

The defendants then moved for summary judgment, and the court granted the motion in part. The court concluded that Matz had presented no evidence to support his claims that prison officials had been deliberately indifferent to the conditions of his confinement, his mental-health treatment, or his transfer to another prison. The court denied the motion for summary judgment as to Matz's claim that four prison officials were deliberately indifferent to his substantial risk of self-harm. On that claim, the parties proceeded to a jury trial.

During trial, Galloway called Matz and the four remaining defendants (a psychologist and three correctional officers) as witnesses. Galloway did not offer any expert testimony. The defendants did not present any witnesses. The jury returned a verdict in favor of the defendants.

Four years later, Matz sued Galloway in federal court under the diversity jurisdiction, 18 U.S.C. § 1332, alleging that Galloway committed legal malpractice when he failed to call an expert witness and chose not to call as witnesses other inmates that Matz says provided supportive affidavits for him in a different case. Galloway filed a motion to dismiss, arguing that Matz could not prove that Galloway's conduct caused the jury to find against Matz. The district court denied the motion, concluding that Matz had met the minimal pleading requirements.

Matz moved five times for recruitment of counsel to assist him in litigating the case, asserting that he suffers from, among other conditions, major depressive disorder and schizoaffective disorder, which rendered him incapable of competently litigating the case on his own.

The district court denied each of his motions. The court first explained that, based on the factors laid out in *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc), Matz's filings were well-written, and he demonstrated a proficient understanding of the factual and legal issues. Further, the court explained that the difficulty of convincing attorneys to take on prisoner cases, coupled with the risk that Matz would later sue the attorney for malpractice if the case were unsuccessful, weighed against recruiting counsel.

The court also warned Matz that it was considering entering summary judgment for Galloway because Matz had failed to present any evidence that the outcome in his case would have been different but for Galloway's errors. *See* FED. R. CIV. P. 56(f). The court gave Matz an opportunity to submit responsive evidence.

In response, Matz stated only that Galloway had failed to return unspecified evidence to him after the case ended. The court concluded that the response was insufficient, and it entered summary judgment for Galloway. The court noted that Matz could have sought discovery from Galloway to obtain relevant evidence, contacted the Department of Corrections for records, called on inmates to corroborate his version of events, or submitted a sworn declaration pointing to specific evidence that would have proven his deliberate-indifference claims.

Matz now appeals. He first argues that the district court wrongly denied his multiple requests for counsel. We review the district court's decisions for an abuse of discretion. *See Ealy v. Watson*, 109 F.4th 958, 967 (7th Cir. 2024).

Litigants do not have a right to counsel in civil cases, *see Pruitt*, 503 F.3d at 657, though a pro se litigant's request for counsel is entitled to careful consideration, *see Diggs v. Ghosh*, 850 F.3d 905, 911–12 (7th Cir. 2017). Here, careful consideration was given: The court reasonably concluded that Matz's pro se filings were coherent, Matz demonstrated a sufficient grasp of the law and facts involved in the case, and the reputational risk in representing Matz—given the malpractice suit against Galloway—warranted withholding the court's limited pro bono resources. *See, e.g.*, *Cartwright v. Silver Cross Hosp.*, 962 F.3d 933, 934 (7th Cir. 2020) ("The courts must be careful stewards of this limited [pro bono] resource.").

Next, Matz argues that the district court erred when it sua sponte entered summary judgment in Galloway's favor under Federal Rule of Civil Procedure 56(f) without ensuring certain procedures were followed. Specifically, Matz contends that he was not given an adequate opportunity to respond to the court's concerns, nor did the court follow procedures regarding the submission of proposed findings of fact and sworn testimony. We review the district court's grant of summary judgment de novo. *See Ealy*, 109 F.4th at 964.

Rule 56(f) allows summary judgment on the court's own motion if the court notifies the parties of the potentially dispositive issue and gives them a chance to respond. *See* FED. R. CIV. P. 56(f); *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986); *Gaetjens v. City of Loves Park*, 4 F.4th 487, 495 (7th Cir. 2021). This procedure is the same even for pro se litigants like Matz. *See Williams v. Wahner*, 731 F.3d 731, 733 (7th Cir. 2013).

Matz received adequate notice but did not present any evidence to create a genuine issue of fact about whether Galloway's performance amounted to malpractice. Specifically, to prove legal malpractice in Wisconsin, Matz must show that Galloway breached a standard of reasonable care and that Matz would have prevailed on the merits in the underlying action but for the breach. *Helmbrecht v. St. Paul Ins. Co.*, 362 N.W.2d 118, 124 (Wis. 1985); *see Pierce v. Colwell*, 563 N.W.2d 166, 169 (Wis. Ct. App. 1997). The court told Matz that he had not presented any evidence from which a reasonable factfinder could conclude that he would have won his civil-rights suit had it not been for Galloway's errors.

Although Matz responded, we agree with the district court that no reasonable juror could conclude that Galloway's omissions could have changed the outcome of the litigation. Matz insists that Galloway was negligent for failing to call inmate witnesses who had provided affidavits for Matz in a different case. But he does not explain what was in those affidavits (and we cannot locate them in the record) that would have bolstered his case. Further, Matz's deliberate-indifference claims would have failed even if Galloway had retained a medical expert to testify about Matz's mental-health status: Matz did not show that alternatives to his confinement would have prevented self-harm or that the defendants knew about better options; he did not prove that the defendants were aware of his inability to stop his self-harm; he did not demonstrate that other prisons offered better mental-health treatment or that the defendants knew of disparities in treatment; and he lacked evidence that the defendants were aware of his mental-health crisis.

AFFIRMED