

NONPRECEDENTIAL DISPOSITION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 November 20, 2024*

Decided November 21, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 23-2488

KENNETH RHODES,
Plaintiff-Appellant,

v.

DAVID WERRIES, et al.,
Defendants-Appellees.

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

No. 19-3278

Jonathan E. Hawley,
Magistrate Judge.

ORDER

Kenneth Rhodes, a prisoner at Western Illinois Correctional Center, appeals the denial of several motions to recruit counsel in a case that he lost after a jury trial. He seeks a new trial with recruited counsel. But having a lawyer would not have made a

* 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).

difference when Rhodes first asked for one. And the district court acted reasonably in denying Rhodes's later motions.[†] We therefore affirm.

According to his complaint, Rhodes awoke to correctional officers passing out breakfast trays in his housing unit. One of the officers, Lieutenant William Davis, opened Rhodes's cell door, and Rhodes approached for his tray. At some point, Rhodes—who is in his 70s and has trouble standing without assistance—placed his hand in the frame of the cell door to steady himself. He accepted the tray, but before he could remove his hand from the door frame, David Werries, another correctional officer, allegedly “slammed” the cell door and “smashed” Rhodes's middle finger. When Rhodes yelled out that his finger was stuck in the door, Werries and Davis allegedly mocked and laughed at him and delayed opening the door to free his hand. Eventually, another officer opened the door and escorted Rhodes to the infirmary.

Rhodes was then sent to an outside hospital, accompanied by two more correctional officers, Timmber Totsch and Ricky Smith. An orthopedic surgeon evaluated and treated the injury. The surgeon recommended a metal splint to immobilize the finger. But, Rhodes alleged, Totsch and Smith informed the surgeon that Western does not allow prisoners to have metal objects—even though exceptions may be made in cases of medical necessity. Rhodes instead received a plastic splint, which he says inhibited his healing.

Rhodes, after attempting to resolve his concerns about these events through the prison's grievance system, sued Davis, Werries, Totsch, and Smith for their roles in causing the injury and interfering with his treatment. The district court screened Rhodes's complaint, *see* 28 U.S.C. § 1915A, and granted him leave to proceed on claims that (1) Werries used excessive force when he shut the door on Rhodes's fingers; (2) Davis failed to intervene in Werries's use of force; and (3) Totsch and Smith were deliberately indifferent to Rhodes's serious medical need. At this time the court also denied Rhodes's first motion to recruit counsel because Rhodes had not demonstrated attempts to find his own lawyer.

The defendants moved for summary judgment on the ground that Rhodes failed to exhaust his administrative remedies. Based on Rhodes's response, the district court

[†] Three judges ruled on the motions: the district judge who screened the complaint, the next assigned district judge, and the (then) magistrate judge, who presided over the trial and ruled on the final motion. Having noted this distinction, we simply refer to “the district court” in this order.

determined that the prison's handling of Rhodes's grievance had rendered the administrative process unavailable and denied the defendants' motion. The deadline for further dispositive motions passed without action from either party. When the defendants later requested leave to file a second motion, the court denied the request as untimely and set the case for trial.

Throughout this time, Rhodes repeatedly renewed his request that the court recruit counsel for him. Rhodes's motions explained that he was unable to represent himself because he lacked legal expertise and litigation experience, had limited access to the prison's law library, suffered from post-traumatic stress disorder, and was on psychotropic medication. Rhodes expressed concern that his limitations would cause the court to get annoyed or frustrated with him. He also explained that his filings had been prepared with the help of a jailhouse lawyer. Each time (before and after the defendants moved for summary judgment), the court concluded that Rhodes was capable of representing himself because he had personal knowledge of the facts, he had been able to adequately convey those facts to the court, he could use discovery to obtain evidence supporting his claim, and the case did not appear overly complex.

Rhodes's final motion to recruit counsel came shortly before trial; he reiterated his previous reasons and added that, at a trial, he would lack the assistance of his jailhouse lawyer. Addressing the motion at the final pretrial conference, the district court acknowledged that the case had entered a different stage and that Rhodes had received assistance in preparing his previous filings, but it concluded that he was able to continue litigating the case. The court confirmed that the two fact witnesses Rhodes had properly disclosed—fellow prisoners who were present on the day of his injury—would be available by videoconference and concluded that Rhodes could manage that process. The court also explained that the case was not too complex for Rhodes, because each claim hinged on facts about which he could personally testify (“what happened as it relates to the injury to your finger, what the injury was and any damages that you have related to that injury”). And Rhodes would not need medical testimony because the fact and severity of his injury were not in dispute. The court observed that Rhodes had “conducted [himself] very well” and had provided “very cogent responses,” and it assured Rhodes that it would guide him to the extent allowed.

At trial, Rhodes told the jury his account of what happened on the morning he injured his finger—essentially, testifying to the facts in his complaint. Rhodes also called the two other prisoners, and they corroborated his account. When the defendants and other defense witnesses testified, Rhodes cross-examined them. At the close of trial,

the jury returned a verdict in favor of the defendants on all claims. Rhodes appeals the verdict based on the district court's refusal to recruit counsel for him.

Before discussing the merits of Rhodes's appeal, we must ensure that our jurisdiction is secure. Rhodes contends that he did not file the only notice of appeal that appears in the record—he believes that the district court filed this notice sua sponte to prevent him from seeking post-trial relief. If Rhodes (the only party with the right to do so) did not file a notice of appeal, then we would not have jurisdiction to consider this appeal: A timely notice of appeal is a jurisdictional requirement in a civil case. *See* 28 U.S.C. § 2107(a); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). But the notice of appeal bears Rhodes's electronic signature and the address of the prison where he's incarcerated. And his immediate prosecution of the appeal—seeking leave to appeal in forma pauperis, moving for the preparation of transcripts at no cost, and ultimately paying the filing fee—is inconsistent with this appeal being unintentional, as is his filing a brief on the merits. Indeed, when the defendants moved for entry of a bill of costs, Rhodes mentioned in his response that he had appealed. And if, implausibly, someone else filed a notice of appeal without Rhodes's consent, he has demonstrated that he was capable of advising us of the mistake instead of proceeding to briefing. We are thus satisfied that there is a properly filed notice of appeal giving us jurisdiction.

As for the merits, Rhodes argues that the district court abused its discretion when it denied his last five motions to recruit counsel. (He does not contest the court's denial of his first motion.) As relevant here, courts considering whether to recruit counsel ask whether the plaintiff appears competent to litigate the case, given its factual and legal complexity. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007) (en banc). We will reverse the denial of a motion for counsel only if the district court abused its discretion and it is reasonably likely that the presence of counsel would have changed the outcome of the case. *Bracey v. Grondin*, 712 F.3d 1012, 1016–17 (7th Cir. 2013); *Pruitt*, 503 F.3d at 659.

None of the decisions here warrants reversal. With respect to Rhodes's earliest motions, he suffered no prejudice from their denial because he prevailed at summary judgment by challenging the defendants' motion with admissible evidence. As for the remaining motions, the court reasonably applied the standard we set out in *Pruitt*. As trial approached, the district court did not overlook the advanced stage of the proceedings or the complexities of trial practice, *cf. Walker v. Price*, 900 F.3d 933, 938–39 (7th Cir. 2018) (*Pruitt* standard requires consideration of procedural stage), nor the fact that Rhodes had assistance up to that point, *cf. id.* at 940–41 (“[T]he court needed to

evaluate [plaintiff's] capacity independent of any unofficial or jailhouse assistance he may have received."'). Still, it observed that Rhodes knew the facts of the case and was able to present them effectively, considered those abilities in light of the complexity of the case, and reasonably concluded that Rhodes's success at trial would depend upon his ability to convince the jury that his account of the facts was what actually happened. *See Mejia v. Pfister*, 988 F.3d 415, 419–20 (7th Cir. 2021).

Rhodes raises one additional argument concerning the partial grant of the defendants' bill of costs. But an appeal of that decision required a separate notice of appeal. *See Ackerman v. Nw. Mut. Life Ins. Co.*, 172 F.3d 467, 468 (7th Cir. 1999); *see also Peck v. IMC Credit Servs.*, 960 F.3d 972, 974 (7th Cir. 2020) (order of costs appealable separately from merits). This appeal was filed before the district court ruled on the bill of costs, so we do not have jurisdiction to consider that collateral issue.

AFFIRMED