NONPRECEDENTIAL DISPOSITION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 December 2, 2024*
Decided December 3, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1675

LOGAN DYJAK, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 21-3151-JES
STACEY HORSTMAN, et al., *Defendants-Appellees*.	James E. Shadid, *Judge*.

O R D E R

Logan Dyjak,[1] a civil detainee at the McFarland Mental Health Center, sued employees of the facility for due process violations in connection with limitations on

* 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).

[1] As in Dyjak's previous appeals, we continue to use the they/them pronouns that Dyjak uses.

access to certain facility privileges. The district court granted summary judgment for the defendants because Dyjak could not link any alleged deprivation to the defendants' actions. We affirm.

We recount the undisputed facts, drawing reasonable inferences in Dyjak's favor. *Rakes v. Roederer*, 117 F.4th 968, 973 (7th Cir. 2024). Dyjak is civilly detained at McFarland, having been found not guilty of murder by reason of insanity. In mid-2018, Dyjak was diagnosed by a staff psychiatrist as having schizoaffective disorder "in sustained remission." On August 15, 2019, Dyjak was evaluated by another staff psychiatrist, Stacy Horstman, who prepared a comprehensive report six days later that modified Dyjak's diagnosis to schizoaffective disorder "in partial remission."[2] Horstman's report was relied upon by McFarland's clinical director, Jo-Ann Lynn, who updated the state court judge on Dyjak's psychiatric needs and McFarland's proposed treatment plan. Dyjak believes that Horstman and Lynn "arbitrarily altered" the diagnosis, which led the hospital to limit Dyjak's access to computers, educational programs, and the facility's café.

Patients at McFarland can be assigned one of several privilege levels that determines their freedom of movement. While a court order is required for the more expansive privilege levels, hospital staff may independently assign others, including "staff supervision," which permits patients to visit non-forensic or secure areas. Dyjak has remained at the staff supervision level since September 2018, even after the modified diagnosis. Horstman testified that Dyjak's diagnosis did not affect the privilege level, but Dyjak asserts that their privileges were tightened around the time of COVID-19's outbreak, when staff restricted their diet, access to gym facilities, and access to educational opportunities.

In July 2021, Dyjak sued Horstman and Lynn, along with hospital administrator Lana Miller, for violations under the Fourteenth Amendment. *See* 42 U.S.C. § 1983. Dyjak asserted, first, that Horstman and Lynn acted with deliberate indifference when they arbitrarily modified Dyjak's diagnosis. Dyjak also asserted that Miller failed to exercise professional judgment when she conditioned the restriction of privileges upon a "blanket administrative policy."

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[2] This diagnosis could be viewed as inconsistent with the defendants' statement in their answer "that on August 16, 2019, Defendant Horstman conducted a mental health evaluation and reaffirmed Plaintiff's original diagnosis of schizoaffective order in remission."

After the defendants moved for summary judgment, Dyjak sought extensions for the time to respond. The court granted Dyjak three extensions, warning in its third order that no further extensions would be granted. After Dyjak made their sixth request for an extension, the court denied the request and stated that it would rule on the defendants' motion without Dyjak's response.

Dyjak moved to reconsider that order, attributing the delay to (1) the court's earlier directive to prioritize responding in a different case, and (2) conditions of confinement that made a timely response more difficult. Dyjak separately moved under Federal Rule of Civil Procedure 56(d) for the court to postpone ruling on the summary judgment motion until they could present additional facts in opposition. The court denied both motions, noting the prior extensions given.

The court then granted the defendants' motion for summary judgment. Regarding Dyjak's claim about the modified diagnosis, the court found that the evidence did not show that the defendants provided Dyjak with mental health treatment that was objectively unreasonable—the standard for a pretrial detainee's claim of inadequate medical care. *See McCann v. Ogle County*, 909 F.3d 881, 886 (7th Cir. 2018). As for the claim about restricted privileges, the court concluded that the defendants' failure to give Dyjak access to non-secure settings did not constitute an atypical and significant hardship that would deprive Dyjak of a state-created liberty interest. *See Thielman v. Leean*, 282 F.3d 478, 484 (7th Cir. 2002).

Dyjak then moved to alter the judgment. Dyjak argued that the court violated Federal Rule of Civil Procedure 56(f)(2) by granting summary judgment on grounds not raised by the defendants. Dyjak maintained that the defendants' summary judgment motion treated his medical-care claim as grounded in procedural due process, while the court granted summary judgment under an objective-reasonableness standard. In Dyjak's view, the court needed to provide notice of its intent to grant the motion on this alternative ground, and time to respond. FED. R. CIV. P. 56(f)(2).

The court denied this motion, too. The court explained that it based its ruling on grounds that Dyjak had raised—the alleged disregard of Dyjak's mental-health needs upon the diagnosis being changed from "in remission" to "in partial remission." The court also pointed out that the defendants had raised the issue when they argued in their motion that there was no evidence that the diagnosis was erroneous. Regardless, the court added, Dyjak—having not responded to the summary judgment motion or contested defendants' evidence—could not show prejudice from not having an opportunity to respond to the court's analysis.

On appeal, Dyjak challenges the court's decision to enter summary judgment without a response, and revives the arguments made while seeking reconsideration—e.g., the difficult circumstances that pro se litigants face while confined. But while a court should consider all relevant circumstances surrounding a party's failure to respond to a motion, the determination whether to excuse a missed deadline is left to the district court's discretion. *See Miller v. Chicago Transit Auth.*, 20 F.4th 1148, 1153. (7th Cir. 2021). Given that the court had granted Dyjak three extensions and warned Dyjak that no further extension would be forthcoming, we see no abuse of discretion to deny a fourth.

Dyjak also renews the argument that the district court failed to provide adequate notice before granting summary judgment on grounds not raised by the defendants. But a court need not provide additional notice under Rule 56(f) when the parties are aware—as here—of the factual issues the court intends to rule on. *See Haley v. Kolbe & Kolbe Millwork Co.*, 863 F.3d 600, 613 (7th Cir. 2017); *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 854 (7th Cir. 2017). The defendants apprised Dyjak of the relevant facts that supported their argument for summary judgment—the psychiatric evaluation reports and the defendants' declarations—so Dyjak cannot claim to be surprised by the outcome.

Dyjak next raises a procedural challenge to the court's basis for entering summary judgment on the medical-needs claim. Invoking the principal pleadings, Dyjak argues that the court should have held the defendants to the admission in their answer that "on August 16, 2019, Defendant Horstman conducted a mental health evaluation and reaffirmed Plaintiff's original diagnosis of schizoaffective disorder in remission." But while a concession in an answer is a binding judicial admission, *see Tibbs v. Admin. Off. of the Ill. Courts.*, 860 F.3d 502, 508 n.1 (7th Cir. 2017), Horstman prepared a report several days later, on August 21, in which she diagnosed Dyjak's remission as only partial. The district court was entitled to consider this later report, and Dyjak has not offered any evidence to refute Horstman's modified diagnosis or show that it was objectively unreasonable.

As for the second claim regarding the restriction on privileges, Dyjak appears to argue that the district court applied an incorrect standard in assessing a civilly confined person's fundamental liberty interest. The court applied the "atypical and significant hardship" standard used in *Thielman*, 282 F.3d at 484 (citing *Sandin v. Conner*, 515 U.S. 472 (1995)), but Dyjak argues the applicable standard should be one of professional judgment, as set forth in *Youngberg v. Romeo*, 457 U.S. 307, 322–23 (1982). Under

Youngberg, a civil detainee is entitled to the exercise of professional judgment when the state subjects him to confinement. *Id.* Dyjak believes that Miller's conduct did not satisfy this standard because she (1) failed to petition the court to grant Dyjak greater privileges and (2) adopted blanket policies limiting Dyjak's privileges.

But even under *Youngberg*, Dyjak could not have prevailed. Dyjak cites no authority to suggest that the Constitution required Miller to present such a petition, let alone introduce any evidence that Miller adopted a blanket policy.

We have considered Dyjak's remaining arguments, and none has merit.

AFFIRMED