NONPRECEDENTIAL DISPOSITION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. 24-2118

JOE'VONE M. JORDAN,
Plaintiff-Appellant,

v.

LAURA SUKOWATY and ROBERT WEINMAN,
Defendants-Appellees.

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

No. 23-C-233

William C. Griesbach,
Judge.

O R D E R

Joe'vone Jordan, a Wisconsin prisoner, asserts that Dr. Laura Sukowaty and Robert Weinman, employees of the Department of Corrections, treated him with deliberate indifference in violation of the Eighth Amendment by denying him access to pain-relieving medical treatment. The district court determined that no reasonable jury

[*] 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).

could conclude that the defendants were deliberately indifferent to Jordan's medical condition and granted the defendants' motion for summary judgment. We affirm.

Because the case was resolved on cross-motions for summary judgment, we recount the facts in the light most favorable to the losing party—here, Jordan. *See Holcomb v. Freedman Anselmo Lindberg, LLC*, 900 F.3d 990, 992 (7th Cir. 2018). Gynecomastia is a medical condition in men characterized by the overdevelopment of glandular breast tissue, which can be sensitive and painful. Pseudo-gynecomastia is an excess of fatty breast tissue without increased glandular tissue. Jordan first developed abnormal breast tissue at age twelve after taking prescription medication.

Jordan sought treatment at Waupun Correctional Institution beginning in December 2020, when he reported breast tenderness and discharge. A doctor at the prison examined him and ordered blood tests, an ultrasound, a mammogram, and a consultation with an endocrinologist. The labs showed "no obvious endocrine cause" for the increased breast tissue, the ultrasound was negative, and the mammogram showed "little in the way of glandular tissue." Based on these results, a consulting endocrinologist diagnosed Jordan with pseudo-gynecomastia.

Then, after an exam, the endocrinologist suggested tamoxifen (an estrogen disruptor) to relieve Jordan's pain but noted that it would not reduce his breast tissue. (A medical provider at the prison declined to prescribe the drug because it is high-risk, and Jordan also refused it because of its anticipated side effects.) The endocrinologist also referred Jordan to plastic surgery to discuss options for removing breast tissue.

Jordan continued submitting health-services requests about his breast tenderness. On the recommendation of the endocrinologist, the prison doctor referred him for a plastic surgery consultation. This doctor also requested renewal of Jordan's prescription for gabapentin that he had to treat an unrelated shoulder injury.

Dr. Laura Sukowaty, the Associate Medical Director of the Bureau of Health Services for the Department of Corrections, oversaw the prison's Class III Committee, which reviews requests for specialized medical treatments and must approve all referrals for surgery. She canceled the referral to plastic surgery. Based on the results of Jordan's medical tests and his diagnosis of pseudo-gynecomastia, Dr. Sukowaty determined that any surgical removal of his breast tissue would be cosmetic, not medically necessary. The appropriate treatment would be weight loss, the use of a chest binder or compression vest, and over-the-counter medication for any pain.

Dr. Sukowaty also declined to authorize renewal of the gabapentin because it was no longer necessary after Jordan's successful shoulder surgery almost a year earlier.

According to Jordan, the gabapentin had been helping with his breast pain, which grew worse when the medication was discontinued. Other medications did not relieve his pain, and he could not afford to purchase them at the canteen, in any event. Jordan was informed that he could request free medication based on his indigency and that tamoxifen remained an option. He had several visits with medical staff to get fitted for a compression vest, and the prison ordered multiple vests to meet his needs.

When Jordan wrote to the Deputy Warden seeking help with his ongoing breast pain, he received a response from Robert Weinman, a registered nurse who was then the prison's Health Services Manager. Weinman told Jordan that he and Dr. Sukowaty had reviewed Jordan's file, and that the easiest and least invasive way to treat the symptoms of pseudo-gynecomastia was for him to lose weight. But in Jordan's experience, his pain persisted even when he weighed less. After losing 20 pounds, he submitted another health-services request to report that his breast tissue was still painful. The pain never resolved, and Jordan attests that it keeps him from sleeping.

Jordan filed this lawsuit under 42 U.S.C. § 1983, asserting that Dr. Sukowaty and Weinman were deliberately indifferent to his serious medical needs in violation of his rights under the Eighth Amendment. After discovery, the parties filed cross-motions for summary judgment; the district court denied Jordan's motion and granted the defendants'. The court assumed that pseudo-gynecomastia is objectively serious but concluded that no jury could find that the defendants were deliberately indifferent. The court explained that Weinman did not treat Jordan and did not have the authority to do so, and that Dr. Sukowaty treated Jordan consistent with her medical judgment.

Jordan appeals and argues as a threshold matter that the district court should have accepted his statement of proposed material facts as true because the defendants did not respond to it. *See* E.D. WIS. CIV. L.R. 56(b)(2)(B). But a district court "has broad discretion to require strict compliance with local rules or to relax the rules and excuse noncompliance." *Edgewood Manor Apartment Homes, LLC v. RSUI Indem. Co.*, 733 F.3d 761, 770 (7th Cir. 2013). Here, the court did not enforce the rules in an unfair or uneven manner, and the parties' cross-motions provided it with each side's version of events with supporting evidence, so it sensibly ruled on the merits of the arguments.

Jordan also argues that a magistrate judge, not the district judge, should have addressed the summary-judgment motions based on consent. But only Jordan returned the consent form. A magistrate judge can conduct dispositive proceedings only when all parties consent. 28 U.S.C. § 636(c)(1); *Coleman v. Lab. & Industry Rev. Comm'n*, 860 F.3d 461, 470 (7th Cir. 2017). True, in cases like this one, the Wisconsin Department of Justice has given blanket consent to the jurisdiction of a magistrate judge. Mem. of Understanding ¶ 3;[†] *see Brown v. Peters*, 940 F.3d 932, 936 (7th Cir. 2019). But that consent applies only through the initial screening stage. Mem. of Understanding ¶ 4. Here, a magistrate judge did not conduct the initial screening, so even the limited consent never took effect. Regardless, § 636(c) allows for the jurisdiction of a magistrate judge with the parties' consent; it does not require a magistrate judge to conduct the proceedings nor divest the district judge of jurisdiction to rule dispositively. *See Carlson ex rel. a class v. Northrop Grumman Severance Plan*, 67 F.4th 871, 874 (7th Cir. 2023).

On the merits, Jordan challenges the district court's deference to Dr. Sukowaty's medical judgment, emphasizing that other physicians referred him to plastic surgery, and that Dr. Sukowaty's interference, and Weinman's response to his grievance, displayed a conscious disregard of his need for treatment. We review the summary-judgment decision de novo. *Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016) (en banc).

To establish a violation of his rights under the Eighth Amendment, Jordan must show that he has an objectively serious medical condition and that the defendants were deliberately indifferent to that condition. *Id.* at 728 (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). On appeal, Dr. Sukowaty and Weinman dispute, as they did in the district court, whether pseudo-gynecomastia is an objectively serious medical condition. We need not decide because, even if the condition is sufficiently serious, Jordan received constitutionally adequate medical treatment.

Jordan lacks evidence that Dr. Sukowaty acted with deliberate indifference when she denied the plastic surgery consultation. True, two medical professionals (the endocrinologist and the prison doctor) recommended a consultation with a plastic surgeon, but neither opined that plastic surgery was a necessary treatment for Jordan's condition. And even if one had, a disagreement between doctors is not evidence of deliberate indifference. *See id.* at 729. Here, Dr. Sukowaty, also a medical professional, deemed surgery to be medically unnecessary to treat pseudo-gynecomastia. She

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[†] Available at: https://www.wied.uscourts.gov/general-orders/memorandum-understanding-re-wi-doj-consent-magistrate-jurisdiction-screening.

explained her decision based on medical evidence, which shows that she exercised her medical judgment. *See Jackson v. Kotter*, 541 F.3d 688, 698 (7th Cir. 2008). This defeats a claim of deliberate indifference unless the decision was "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate" that her decision was not based on medical judgment at all. *Petties*, 836 F.3d at 729 (citation omitted). The record here does not allow such an inference.

For the same reason, Jordan cannot establish that ending his prescription for gabapentin is evidence of deliberate indifference. Dr. Sukowaty attested that gabapentin is used to treat nerve pain, not pain related to gynecomastia, and she explained that its use was no longer appropriate for Jordan, given his successful shoulder surgery. Again, this was a decision based on medical judgment. *See Zaya v. Sood*, 836 F.3d 800, 805 (7th Cir. 2016). The Eighth Amendment does not entitle a prisoner to his choice of medication, nor does it require that prison doctors keep patients pain-free. *Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 681 (7th Cir. 2023).

The recommendation that Jordan should lose weight to ease his symptoms was also an exercise of medical judgment. Weinman, who worked in an administrative role, was entitled to defer to Dr. Sukowaty's judgment about Jordan's treatment, and weight loss was one of her recommendations. *See Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010). Jordan insists that weight loss has been ineffective, and it is true that persisting in an ineffective course of treatment can be evidence of deliberate indifference. *See Petties*, 836 F.3d at 729–30. But here, the record shows that Jordan did not reduce his weight below a clinically obese level during the time he complained of breast pain, so there is no evidence that Dr. Sukowaty knew that additional weight loss would be ineffectual. She also authorized a compression vest to help with the symptoms, part of an overall course of treatment that is not consistent with deliberate indifference. *See Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 663 (7th Cir. 2016). The Eighth Amendment does not require that Jordan receive his preferred choice or the most effective course of medical treatment. *See Brown v. Osmundson*, 38 F.4th 545, 553 (7th Cir. 2022).

AFFIRMED