

NONPRECEDENTIAL DISPOSITION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 August 14, 2024*

Decided June 6, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-2946

LAZEREK AUSTIN,
Plaintiff-Appellant,

v.

CHERYL HANSEN, *et al.*,
Defendants-Appellees.

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

No. 1:20-cv-01399-JES

James E. Shadid,
Judge.

ORDER

Lazerek Austin is a state prisoner who sued three medical providers working at Pontiac Correctional Center in Illinois. He alleged that nurse Josephina Torrez-Brady, nurse practitioner Cheryl Hansen, and Dr. Andrew Tilden violated the Eighth Amendment by acting with deliberate indifference to his serious medical needs: 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).

urinary tract infection and a hernia.[†] The district court granted summary judgment for the defendants, determining that Austin failed to offer evidence from which a reasonable jury could find any of the defendants liable. In this order, we address all Austin's appellate arguments except his contention that the district court erroneously declined to find a volunteer lawyer for him after repeated efforts to do so were not successful. We address that issue in a companion opinion issued today in which we conclude there was no abuse of discretion. With respect to the issues we address in this order, we also find no reversible error.

We construe the summary-judgment record in the light most favorable to Austin as the non-moving party. See *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021). On October 28, 2018, Austin was incarcerated at Pontiac. On October 28, 2018, after noticing a painful lump in his abdomen and blood in his urine, he saw nurse Torrez-Brady at sick call. Austin told her of his symptoms, and she referred him to a higher-level provider. Accordingly, Nurse Practitioner Hansen saw Austin two days later and ordered a urinalysis as well as X-rays of Austin's kidneys, urinary tract, and bladder. She also conducted a physical examination and concluded that the lump was a palpable, reducible hernia.

Over the next week or so, Austin told Torrez-Brady of his persisting symptoms when she was distributing medication to patients in their housing units. During these interactions, Austin asked for antibiotics, insisted that he needed to see a doctor, and complained that the urinalysis ordered by NP Hansen had not been performed. According to Austin, Torrez-Brady was dismissive of his pain and sarcastically observed that he was not the only patient in the prison seeking medical attention. After submitting an urgent-care request, Austin was seen by NP Hansen on November 8 and was X-rayed that day. The next day, the urinalysis was completed. Dr. Tilden reviewed the results of these tests and found no sign of an infection.

The next month, in December 2018, Austin reported urinating blood and pus. Dr. Tilden ordered a urine dipstick test and placed Austin in the infirmary for 23 hours of observation. After the test produced abnormal findings, Dr. Tilden prescribed an antibiotic. The next day, Austin complained of stomach pain. Dr. Tilden diagnosed him with a urinary tract infection, ordered more lab work, and then discharged him from the infirmary. Austin saw Dr. Tilden twice more that month, reporting discomfort while

[†] During the course of litigation, Dr. Tilden died, and the Administrator of his Estate (Pamela E. Hart) was substituted as a defendant.

urinating, dizziness, and abdominal pain. Dr. Tilden determined that the urinary tract infection was “in early resolution.” He prescribed a different antibiotic. As to Austin’s other symptoms, Dr. Tilden noted stable vital signs and no obvious masses in Austin’s abdomen.

In January 2019, Dr. Tilden saw Austin again to follow up on his abdominal pain and dizziness. Dr. Tilden referred Austin for an ultrasound and conducted lab tests, including another urinalysis. All yielded normal results. NP Hansen conducted a physical examination, noting that a lump was palpable in his lower abdomen but present only upon muscle flexion. She prescribed ibuprofen for Austin’s discomfort.

Over the next few months, Dr. Tilden continued seeing Austin for abdominal pain. He ordered more diagnostic tests and prescribed a stool softener. A second ultrasound showed normal results in June 2019. But Austin’s symptoms persisted, and Dr. Tilden provided over-the-counter pain medication, a stool softener, an antacid, and a topical analgesic. From July 2019 until November 2019, Austin was seen at sick call or urgent care for complaints unrelated to his abdominal lump. Two months later, Austin was transferred to a different prison.

Austin filed his § 1983 complaint in November 2020, alleging that nurse Torres-Brady, NP Hansen, and Dr. Tilden displayed deliberate indifference to his urinary tract infection (all three defendants) and hernia (only the latter two). After these claims survived screening under 28 U.S.C. § 1915A, discovery began. Austin filed a motion to compel discovery from NP Hansen and Dr. Tilden, who had withheld. Austin asserted, documents related to the order of his first urinalysis in November 2018 and the full results of his December 2018 urine dipstick test. He insisted that the defendants possessed responsive documents beyond those they had produced: his medical chart noting the order for a urinalysis and a summary of the results of the dipstick test. NP Hansen and Dr. Tilden responded that no other responsive documents existed. The district court denied the motion to compel, agreeing that the defendants had responded adequately to the request for production.

Next, the defendants (in two groups) moved for summary judgment. They argued that, even if Austin had any serious medical conditions, the record established that each of them responded appropriately by referring him for follow-up care, investigating his symptoms with testing, and providing medication when the test results were abnormal or Austin’s pain persisted.

Before responding to the summary-judgment motions, Austin filed two more discovery motions. First, again asserting that the defendants withheld a urinalysis order and lab results, Austin asked the court to compel production of these documents. He asked the court to impose sanctions if the defendants did not comply by deeming it admitted that NP Hansen did not order the first urinalysis as early as his medical chart said and that the dipstick test did not thoroughly test for an infection. Second, he filed a motion under Federal Rule of Civil Procedure 56(d) to reopen discovery. Austin said that he needed to serve more interrogatories and document requests relating to the policies or treatment protocols of the prison's healthcare contractor. He also attested that, since discovery had closed, a nurse at his new prison had provided him with a harness for his hernia and suggested that he should have received one when the hernia first appeared. The court denied both motions, explaining that discovery was long over, but allowed Austin more time to respond to the summary-judgment motions.

In his response brief, Austin argued that his infection and hernia were serious medical needs to which the defendants responded with deliberate indifference. With respect to his urinary infection, Austin argued that all three defendants delayed treatment and prolonged his suffering. As to the hernia, he argued that NP Hansen and Dr. Tilden did not provide meaningful treatment. The district court questioned whether Austin suffered from an objectively serious medical condition but concluded that, regardless, Austin's evidence was insufficient to raise a genuine issue of material fact about whether any defendant acted with deliberate indifference. The court granted the defendants' motions.

Austin appeals, first challenging the summary-judgment decision, which we review de novo, evaluating whether a reasonable jury could conclude that any defendant was deliberately indifferent to a serious medical condition. *Johnson*, 5 F.4th at 824. We assume, as the district court did, that a urinary tract infection or blood in the urine, a hernia, and the corresponding pain were objectively serious medical conditions. See *id.* (explaining hernia and resulting pain can be an objectively serious medical condition); *Duckworth v. Ahmad*, 532 F.3d 675, 677, 679 (7th Cir. 2008) (accepting that blood in urine is an objectively serious medical condition). To avoid summary judgment, Austin had to supply evidence that the defendants subjectively knew of and disregarded or failed to respond reasonably to a risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). He did not.

First, on this record, a reasonable jury could not conclude that any defendant was deliberately indifferent to Austin's bloody urine and infection. Torrez-Brady, the nurse,

provided the care within her authority by documenting Austin's symptoms and referring him to a nurse-practitioner or physician. See *Brown v. Osmundson*, 38 F.4th 545, 553 (7th Cir. 2022) (recognizing that a nurse can provide only limited care). Austin contends that when he later complained to her during medication distribution about his ongoing symptoms and incomplete urinalysis test, she should have ensured that he immediately saw a doctor. In his view, her comments dismissing him and her failure to take him to urgent care would allow a jury to find she unnecessarily prolonged his suffering. But regardless of any callous comments Torrez-Brady may have made, there is no evidence that her actions departed so substantially from the professional norm that she acted with deliberate indifference. See *Gayton v. McCoy*, 593 F.3d 610, 623 (7th Cir. 2010) (no deliberate indifference when nurse did not have patient immediately examined by doctor). Furthermore, Austin lacks evidence that any delay during the week he complained to Torrez-Brady exacerbated his condition or unnecessarily prolonged pain. See *Wilson v. Adams*, 901 F.3d 816, 822 (7th Cir. 2018), quoting *Petties v. Carter*, 836 F.3d 722, 730–31 (7th Cir. 2016). In fact, at his next appointment the urinalysis and X-rays showed no signs of an infection.

Both NP Hansen and Dr. Tilden investigated Austin's symptoms and treated his infection. When NP Hansen first saw Austin in October, she ordered a urinalysis and X-rays based on his symptoms. Even though those tests were not completed for about ten days, Austin has no evidence that NP Hansen was responsible for the wait. Instead, he speculates that she did not order the tests until later, despite what his medical chart says, but he offers no evidence to support that speculation. See *Giles v. Godinez*, 914 F.3d 1040, 1048 (7th Cir. 2019) (conjecture is not enough to establish a dispute of material fact). When Austin's symptoms persisted, Dr. Tilden placed him under observation, ordered more testing, and prescribed an antibiotic. At follow-up appointments, NP Hansen and Dr. Tilden continued to order testing, monitored his vital signs, and dispensed or prescribed new medications. In sum, the undisputed facts shows that NP Hansen and Dr. Tilden exercised professional judgment in responding to Austin's urinary symptoms. See *Johnson*, 5 F.4th at 825–26. Austin's disagreement with the course of treatment—insisting he should have been tested differently and provided with prescription medication earlier—is insufficient to prevent summary judgment. See *id.*

NP Hansen and Dr. Tilden also were entitled to summary judgment on Austin's claim about his hernia. Both providers repeatedly examined Austin's abdomen and ordered imaging tests to investigate his discomfort. The ultrasounds results were consistently normal, but NP Hansen and Dr. Tilden continued to provide pain medication in response to Austin's complaints. There is no evidence that NP Hansen

and Dr. Tilden failed to exercise professional judgment when taking these actions. See *id.* Austin insists that they did not provide meaningful treatment because his pain persisted, and he points out the different treatment he received at another prison. The Eighth Amendment does not “impose the unrealistic requirement that doctors keep patients completely pain-free.” *Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 681 (7th Cir. 2023). Differing opinions among medical providers about treatment plans are insufficient to establish deliberate indifference. *Shields v. Illinois Dep’t of Corrections*, 746 F.3d 782, 797 (7th Cir. 2014).

Austin next challenges the denial of his motions to compel and for sanctions for purportedly missing records related to his first urinalysis order and urine dipstick test results. We review the district court’s rulings for abuse of discretion, *James v. Hyatt Regency Chi.*, 707 F.3d 775, 784 (7th Cir. 2013), and find none. Austin was not entitled to prolong discovery to search for documents he merely assumed existed. See *id.* In any case, as explained above, Austin did not establish that any delay in testing worsened his condition nor that the treatment provided based on the test results was constitutionally deficient. Thus, Austin cannot show, as required, that the denial of his motions to compel resulted in actual and substantial prejudice. See *id.* Because he has nothing to support his assertion that the defendants withheld documents, he was not entitled to adverse inferences as a sanction. *Norman-Nunnery v. Madison Area Tech. Coll.*, 625 F.3d 422, 428–29 (7th Cir. 2010).

Finally, Austin argues that the district court should have granted his motion to reopen discovery. We review rulings on Rule 56(d) motions for an abuse of discretion. *Smith v. OSF HealthCare Sys.*, 933 F.3d 859, 865 (7th Cir. 2019). Austin supported his motion by submitting an affidavit to explain why he sought further discovery to oppose summary judgment: He attested that serving interrogatories and document requests about the policies of the prison’s healthcare contractor would show that NP Hansen and Dr. Tilden did not follow protocol when treating his hernia. See *id.* But obtaining the treatment policies would not necessarily have helped Austin’s claims survive summary judgment. An official’s failure to follow policies or protocols may be relevant evidence, but not dispositive, for prison policies do not set the standard under the Eighth Amendment. See *Estate of Simpson v. Gorbett*, 863 F.3d 740, 746 (7th Cir. 2017). The district court therefore did not abuse its discretion in denying Austin’s motion to prolong discovery to pursue the matter. See *Smith*, 933 F.3d at 866–67.

AFFIRMED.