

NONPRECEDENTIAL DISPOSITION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 February 10, 2026 *
Decided February 10, 2026

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 25-1389

ROBERT L. COLLINS BEY,
Plaintiff-Appellant,

v.

EILEEN S. GAVIN and WELLHART,

LLC,

Defendants-Appellees.

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

No. 22-cv-383-jdp

James D. Peterson,

Chief Judge.

O R D E R

Robert Collins Bey, a Wisconsin prisoner, challenges the district court's award of summary judgment to Eileen Gavin, a prison doctor, and her employer, Wellhart, LLC, who he alleged violated his rights under the Eighth Amendment by delaying treatment

* 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).

of his broken hand. Because no reasonable jury could find that Gavin was deliberately indifferent to Collins Bey's serious medical needs, we affirm.

We review the record in the light most favorable to Collins Bey as the non-moving party. *Clemons v. Wexford Health Sources, Inc.*, 106 F.4th 628, 634 (7th Cir. 2024). In September 2019, while incarcerated at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, Collins Bey punched the glass window of his cell during an argument with a unit supervisor. Fearing that he had broken his hand, he told the unit supervisor and other prison staff about the pain and swelling in his fingers, but they did not contact medical staff.

The next day, Collins Bey encountered Gavin by coincidence in a hallway while being escorted to a haircut. He showed Gavin his swollen hand and told her that he was in pain and needed to see her. The parties dispute how Gavin responded. Collins Bey contends that Gavin nodded and agreed that she needed to examine him. Gavin asserts that she told him to file a health-service request because she could examine prisoners only if they submitted a request or if the nurses scheduled the appointment. After the conversation, Collins Bey did not file a request and Gavin did not arrange an appointment to examine him.

Nine days after the injury, Collins Bey saw prison nurses for a scheduled blood draw, and he showed them his hand. The nurses concluded that he did not need emergency care and scheduled an appointment with Gavin for the next day. At that appointment, Gavin examined Collins Bey's hand and suspected he had fractured one or two fingers. She offered to schedule x-rays with another doctor for the next day, but Collins Bey insisted on seeing Gavin for his follow-up appointment. Gavin then scheduled the follow-up appointment and x-rays for the following Monday, four days later, and told Collins Bey to treat his hand with rest, ice, compression, and elevation in the meantime. Collins Bey disputes agreeing to postpone the x-rays but agrees that he wanted to see Gavin for his follow-up appointment. A different provider ultimately took his x-rays the following Monday, which confirmed that Collins Bey fractured his fingers. To this day, two of Collins Bey's fingers remain deformed and weakened.

In July 2022, Collins Bey sued Gavin, Wellhart, and several other persons under 42 U.S.C. § 1983 for delaying his care. He alleged the defendants violated his rights under the Eighth Amendment by acting with deliberate indifference to his fractured fingers. He also asserted that the defendants were negligent under Wisconsin law. Collins Bey moved for recruitment of counsel and an expert witness, arguing that the case was too complex for him to litigate pro se. The court denied Collins Bey's motion

because he had shown in previous cases that he could litigate on his own, his court-recruited attorneys in another case had withdrawn after he allegedly sexually harassed them, and it was too soon to know if “the court would need to take the rare step of appointing an expert.”

After months of discovery, the district court granted summary judgment to Gavin and Wellhart because it determined that Collins Bey presented insufficient evidence that Gavin acted with deliberate indifference. The court also reiterated its previous ruling on Collins Bey’s motion to recruit counsel and an expert witness, concluding that it was “extremely unlikely” that recruited counsel would be able to find an expert who would opine that Gavin failed to meet the standard of care. The court then determined that because Collins Bey lacked a medical expert, he could not sustain his negligence claim. The court denied summary judgment to the remaining defendants, with whom Collins Bey later settled.

On appeal, Collins Bey maintains that Gavin was deliberately indifferent to his serious medical needs when she delayed his initial appointment and his x-rays. To establish deliberate indifference, Collins Bey must show that Gavin knew of and disregarded a substantial risk of harm. *See Wilson v. Adams*, 901 F.3d 816, 820 (7th Cir. 2018). And because his claims concern delays in care, he must also marshal evidence that the delays exacerbated his injury or unnecessarily prolonged his pain. *Id.* at 822.

Collins Bey argues that the district court erred when it resolved two factual issues in favor of Gavin. First, he contends that the court resolved in Gavin’s favor the question whether Gavin told Collins Bey to file a health-service request when he encountered her in the hallway. Second, he argues that the district court resolved in Gavin’s favor the issue whether Collins Bey agreed to postpone his x-rays until he could see her for another appointment.

We see no error with respect to the health-service request. The court credited Collins Bey’s account of the conversation that Gavin did not instruct Collins Bey to file a health-service request when he showed her his swollen hand. Rather, the court decided that even if it assumed that Gavin did not instruct him to file a request, she was still entitled to rely on prison procedure for the scheduling of appointments because “one wouldn’t expect a doctor to proactively set an appointment for a patient she encounters on the street.” Administrative convenience may be a permissible factor to consider when making treatment decisions if it does not result in “the exclusion of reasonable medical judgment about inmate health.” *Clemons*, 106 F.4th at 637 (quoting *Roe v. Elyea*, 631 F.3d 843, 863 (7th Cir. 2011)). Here, the parties do not dispute that Gavin told

Collins Bey that he needed medical care. Her reliance on the established process for scheduling appointments thus did not result in the exclusion of reasonable medical judgment.

We likewise see no error with respect to the x-ray appointment. Again, the court credited Collins Bey's account. Even assuming he did not agree to the delay, the district court concluded that Collins Bey did not marshal evidence to show that the four-day delay exacerbated his injury or prolonged his pain. "[E]vidence that the defendant responded reasonably to the risk, even if he was ultimately unsuccessful in preventing the harm, negates an assertion of deliberate indifference." *Clemons*, 106 F.4th at 636 (quoting *Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 483 (7th Cir. 2022)). Here, Gavin responded to Collins Bey's swollen hand by scheduling a follow-up appointment and x-rays, and ordering rest, ice, compression, and elevation during the four days before his x-ray.

Separately, Collins Bey contends that the district court abused its discretion by declining to recruit counsel and a medical expert. In particular, he objects to this decision as unfair considering the court's grant of summary judgment on the negligence claim based on his lack of a medical expert. Our review is limited to the record as it existed when the motion was denied. *Pruitt v. Mote*, 503 F.3d 647, 659 (7th Cir. 2007) (en banc). At that stage, the district court appropriately evaluated Collins Bey's competence to litigate the case given its complexity and noted it was too early to say whether he would need an expert. *See id.* at 654. When later granting summary judgment on the negligence claim, the court acknowledged that Collins Bey could not prevail without an expert. But it reasonably concluded that neither it nor recruited counsel was likely to find an expert to testify in Collins Bey's favor given the short delay in receiving off-site care after being seen by Gavin. *See Watts v. Kidman*, 42 F.4th 755, 767 (7th Cir. 2022). We see no abuse of discretion on this record. And in any event, Collins Bey has not shown prejudice. *See Wand v. Kramer*, 143 F.4th 823, 833 (7th Cir. 2025).

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

AFFIRMED