

NONPRECEDENTIAL DISPOSITION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 September 11, 2023*

Decided September 13, 2023

BeforeFRANK H. EASTERBROOK, *Circuit Judge*ILANA DIAMOND ROVNER, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-1620

JAMES JOHNSON,
*Plaintiff-Appellant,**v.*GHALIAH OBAISI, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 17-cv-04675

Andrea R. Wood,
*Judge.***ORDER**

James Johnson, an Illinois prisoner, appeals from the summary judgment rejecting his claim that a prison doctor was deliberately indifferent toward his ankle injury. *See* 42 U.S.C. § 1983. The district court concluded that Johnson did not provide

* 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).

enough evidence to persuade a reasonable jury that the doctor violated the Eighth Amendment. We affirm.

We recount the following facts in the light most favorable to Johnson, the non-moving party at summary judgment, and draw all inferences in his favor. *See Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016) (en banc). In late 2012, while incarcerated at Stateville Correctional Center, Johnson injured his ankle playing basketball. He felt his ankle pop in multiple places and believed that it was broken. A medical provider initially examined the injury, determined that Johnson had sprained his ankle, prescribed pain medication, authorized crutches, and ordered an X-ray that confirmed Johnson's ankle was not fractured. Dr. Saleh Obaisi, the prison's medical director at the time, reviewed and approved the sprain diagnosis, and diagnosed secondary tendonitis. He then prescribed more pain medications for Johnson, reauthorized the use of crutches, and ordered an ankle brace.

Two weeks after Johnson's first appointment, Dr. Obaisi conducted a follow-up examination and diagnosed Johnson with left foot fasciitis. He gave Johnson a steroid injection to reduce inflammation and prescribed more pain medications. Dr. Obaisi also discontinued Johnson's permit for crutches. Johnson recalled the visit differently: he testified at his deposition that Dr. Obaisi confiscated the crutches he needed for the pain and insisted he walk without them.

Johnson's ankle then seemed to improve. At his next follow-up appointment, he reported only minor pain; Dr. Obaisi, observing no swelling, concluded that the tendonitis was resolved. At another visit not long later, Dr. Obaisi noted that when Johnson left his appointment, he walked with a normal gait and no limp. At the next two visits, Johnson complained of ankle and foot pain; Dr. Obaisi noted the absence of obvious abnormalities (Johnson had full range of motion and no swelling) but continued to prescribe anti-inflammatory and pain medications.

In early 2014, Johnson sought treatment for ankle pain again. After consulting with Dr. Obaisi, a nurse provided Johnson with an ankle brace. A few months later, Johnson returned, and Dr. Obaisi ordered an X-ray that revealed no fracture. Additional X-rays taken later that year and in 2016 revealed no new findings.

When Johnson continued to report pain in early 2017, Dr. Obaisi diagnosed him with chronic left-ankle tendonitis, prescribed anti-inflammatory and pain medications, and recommended that he consult with an off-site orthopedic surgeon. But before the consultation could take place, Johnson was transferred to another prison. Around the

same time, a sweep of Johnson's cell revealed containers of expired pain medications (naproxen and ibuprofen), indicating that Johnson might not have been following the guidance for his prescriptions.

Johnson eventually sued Dr. Obaisi, asserting that he was deliberately indifferent to Johnson's severe ankle injury in violation of the Eighth Amendment. The district court, recognizing that Johnson's case presented complex medical issues, recruited a lawyer to represent him. Once counseled, Johnson amended his complaint, restating his Eighth Amendment claims and adding as defendants Dr. Arthur Funk (the Regional Medical Director) and Nikki Duffield (an Illinois Department of Corrections Healthcare Administrator). The parties proceeded to discovery, during which Johnson settled separately with Duffield.

Next, Dr. Funk and Dr. Obaisi (who had since died and was now represented by his estate's independent executor) moved for summary judgment, supported by a statement of undisputed facts that chronicled Johnson's medical appointments over the years.

Johnson admitted to nearly all the undisputed facts offered by the defendants (and where he did not admit to a fact, he did not cite to evidence to support his disagreement). He also countered with several arguments to oppose summary judgment. He asserted, for instance, that Dr. Obaisi expressed deliberate indifference through profanity-laced accusations that Johnson was lying about his pain, acting like a baby, and needed simply to "walk it off." Johnson also contended that Dr. Obaisi prolonged his pain by prescribing pain medications that failed to improve his ankle sprain for more than five years. And he invoked Dr. Funk's testimony that not only should an ankle sprain resolve in a matter of weeks, but also inconclusive X-rays should be followed up with an MRI.

The district court entered summary judgment for both defendants. Regarding Dr. Funk, the court explained that there was no evidence he ever interacted with Johnson, let alone knew of any grievances Johnson submitted, and such a supervisory official cannot be personally liable under a theory of respondeat superior. As for Dr. Obaisi, the court found no evidence that his treatment of Johnson's ankle injury and pain fell below minimal professional standards. The court highlighted Dr. Obaisi's directives that Johnson's ankle repeatedly be X-rayed (seven times over five years, with no evidence of fracture or other ailment consistent with reported pain); that Johnson receive steroid injections, pain medications, and an ankle brace; and that Johnson be referred to an

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orthopedic surgeon. The court added that Johnson at times appeared not to have taken his pain medications or worn his ankle brace as ordered.

On appeal Johnson, proceeding pro se, challenges only the ruling in favor of Dr. Obaisi. Johnson maintains that the district court ignored material facts relating to Dr. Obaisi's culpable state of mind (reflected through his confiscation of the crutches, profanity-laced tirade, and discrediting complaints of pain), as well as the ineffectiveness of Dr. Obaisi's treatment regimen (called into question, Johnson says, by Dr. Funk's testimony and by a physician's note stating that the pain medications were not working).

Based on Johnson's counseled submissions in the district court, we see no error. As the district court rightly explained, Johnson pointed to no admissible evidence—and instead relied on his operative complaint—to support his argument that Dr. Obaisi provided him with constitutionally deficient care. A party opposing summary judgment must point to specific evidence other than his pleadings. *See, e.g., Celotex Corp.*, 477 U.S. at 324; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Rule 56(c)(3) assigns to the parties the duty to “cit[e] to particular parts of materials in the record” when asserting that genuine factual disputes foreclose summary judgment. *See Flynn v. FCA US LLC*, 39 F.4th 946, 953 (7th Cir. 2022) (quoting FED. R. CIV. P. 56(c)(3)). But even if we consider Johnson's characterization in his deposition testimony that Dr. Obaisi thought Johnson was lying about his pain, Dr. Obaisi's remarks do not suggest deliberate indifference. Dr. Obaisi may have been mistaken in his views, but Johnson's testimony does not reflect that the doctor's opinion was insincere. As we have explained, a doctor's sincere belief that an inmate was malingering does not support an inference of deliberate indifference to the prisoner's medical needs. *See Townsend v. Cooper*, 759 F.3d 678, 690 (7th Cir. 2014). Also, to the extent Johnson thinks that Dr. Funk's testimony created a fact question over the need for an MRI, a difference of opinion between medical professionals does not itself establish deliberate indifference. *See Petties*, 836 F.3d at 729.

Finally, Johnson submitted an affidavit concerning recent treatment of his ankle by an orthopedic surgeon. But because he did not present this affidavit in the district court, we may not consider it here. *See Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 2 F.4th 1002, 1012–13 (7th Cir. 2021).

AFFIRMED