

NONPRECEDENTIAL DISPOSITION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 June 25, 2024*

Decided July 1, 2024

BeforeCANDACE JACKSON-AKIWUMI, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-1441

JASON PENNINGER,
*Plaintiff-Appellant,**v.*PROMISE BLAKELY and ANTHONY
WATSON,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:19-CV-295 DRL

Damon R. Leichty,
*Judge.***ORDER**

Jason Penninger, an Indiana prisoner, accused two prison officers of violating his Eighth Amendment rights by deliberately ignoring the danger that a fire burning in a different cell block posed to him. He lost against one defendant, Anthony Watson, after a jury found in Watson's favor, and the district court entered a default judgment and

* 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).

imposed nominal damages against the second defendant, Promise Blakely, who had never appeared in the case. On appeal, Penninger does not challenge the validity of the jury's assessment of the evidence. Rather, he argues that the district court abused its discretion in denying his pretrial motions to recruit counsel and to grant discovery requests. He also contests the district court's decision to award one dollar in nominal damages against Blakely. Because the court reasonably handled those matters, we affirm.

For context, we describe the evidence presented to the jury. In April of 2017, a fire broke out for 30 minutes in a cell block two floors above and on the other side of the building from Penninger's cell. Penninger testified that he heard screams, smoke started to fill his cell, and it stung his eyes and impaired his breathing. He also said that he heard officers ask whether they should evacuate the building, and an officer (whom he did not name) told them not to. Finally, he testified that he has had nightmares, panic attacks, and anxiety since the fire. According to the defense, smoke had not yet filled Penninger's cell block when Watson responded to the fire two floors above. Watson, whom a video recording showed reaching the fire within minutes of receiving an alert about it, worked to contain it and to rescue a prisoner trapped in a cell with the flames. A lieutenant radioed the captain to receive permission to evacuate the building and then assisted with the evacuation while Watson continued to fight the fire. The fire killed one prisoner, but Penninger was evacuated to safety.

Penninger was largely unsuccessful in pressing his claims. At trial, the jury found that he had not proven his case, and the court entered judgment for Watson. As for Blakely, who never appeared, Penninger moved for default judgment. The court entered judgment against her, but it found that Penninger had not proven any physical injury beyond the de minimis and therefore awarded him one dollar in nominal damages.

In this appeal, Penninger focuses mainly on rulings that preceded the trial. The pretrial proceedings, which lasted almost four years, began with his complaint in which he alleged that he heard Watson say "F*** them inmates, don't let them out of their cells" and saw that Blakely "refused to help." Three discovery rulings are relevant to this appeal. First, the district court denied one of Penninger's motions to compel because he had filed it three months after the close of discovery and did not include a list of the discovery he sought, as required by N.D. IND. L.R. 26-2(a)(2)(A). Penninger filed a motion for reconsideration, but the court denied that as well because he showed no reason to upset the earlier ruling. Second, Penninger asked the court to compel

Watson to produce some discovery materials. The court denied this motion because Penninger failed to explain why the discovery was relevant to his complaint or why Watson's objections to his requests were improper. (It explained how Penninger could fix these deficiencies, and Penninger later refiled his motion, which the court granted in part.) Finally, Penninger asked the court to subpoena the prison for several items. The court denied this motion because the discovery period had closed more than a year earlier.

Penninger also moved several times for recruitment of counsel. He cited, among other things, difficulties obtaining discovery materials, limited access to the law library, his transfer to another prison, his reliance on a "jailhouse lawyer," his unfamiliarity with trial preparation, and his inability to locate witnesses or create exhibits. The district court denied each motion, reasoning that Penninger had personal knowledge of the relevant events, the case did not involve complex issues, and Penninger had showed that he could represent himself. Responding to Penninger's final requests for counsel, the court emphasized that, even as the case advanced to trial, Penninger had been "articulate and coherent" in hearings, had produced "well-reasoned" filings, and had "won discovery battles." Thus, the court reasoned, he was competent to litigate and try the case.

On appeal, Penninger first maintains that the court should have recruited counsel for him. He argues that the case was too complex because certain evidence (he does not specify what) was unavailable to him and expert testimony was needed to establish the damage to his mental health from the fire. He further argues that counsel would have achieved a different outcome after the trial.

We review the denial of a motion to recruit counsel for an abuse of discretion, *see Pruitt v. Mote*, 503 F.3d 647, 658 (7th Cir. 2007) (en banc), and, for three reasons, we see no reason to disturb these rulings. First, the court permissibly ruled that Penninger had competently handled his case at all pretrial stages: As the court reasonably observed, over several years of litigation, Penninger had crafted "well-reasoned" motions, appeared "articulate" in hearings, and obtained favorable rulings.

Second, the court reasonably concluded that the case was not so complex that it demanded the assistance of counsel at trial. As the court properly noted, Penninger had personal knowledge of all the relevant events—a fire-response operation that he saw and heard himself. *See Romanelli v. Suliene*, 615 F.3d 847, 853 (7th Cir. 2010). His claim was that, based on what he heard and saw, the defendants profanely and deliberately

refused to help him during the fire. Assistance of counsel to locate unspecified witnesses or documents was not essential to provide that first-hand account.

Third, with respect to Penninger's mental health, the district court's refusal to recruit counsel did not prejudice him. As relevant here, a plaintiff like Penninger can receive damages for psychological traumas only if he also experienced a physical injury, *see* 42 U.S.C. § 1997e(e), or if the defendants maliciously refused to help him, *see Thompson v. Holm*, 809 F.3d 376, 381 (7th Cir. 2016). Penninger does not challenge the district court's finding that he did not suffer a compensable physical injury, nor did he testify at trial to any malicious conduct (despite his allegations of malice in his complaint). Further, the jury did not find any such malice either. Thus, no compensation was available for injuries to Penninger's mental health, even if he had offered expert testimony regarding it. *See Mejia v. Pfister*, 988 F.3d 415, 420 (7th Cir. 2021).

Penninger next turns to the discovery rulings. He contends that the district court erred in refusing to reconsider its earlier denial of his request for discovery, to compel discovery, and to subpoena several items from the prison. He insists that, had the court responded favorably, the trial would have resolved in his favor, and the court would have awarded him more than one dollar in the default judgment.

We review these discovery-related decisions for an abuse of discretion, *see Alicea v. County of Cook*, 88 F.4th 1209, 1218 (7th Cir. 2023), and again conclude that none occurred. As for the motion to reconsider (denied because Penninger gave no reason to upset the earlier ruling that his discovery request was untimely and violated a local rule requiring a description of the requested materials) and the motion to subpoena items (denied as untimely), the rulings were reasonable. District courts may require strict compliance with the local rules, *see Hinterberger v. City of Indianapolis*, 966 F.3d 523, 528 (7th Cir. 2020), and may enforce discovery deadlines, *see Alicea*, 88 F.4th at 1218–19. Likewise, the court did not abuse its discretion when it denied the motion to compel (while allowing Penninger to cure the deficiencies later, which he did) on the ground that Penninger did not adequately explain to the district court why the discovery was needed. *See Gonzalez v. City of Milwaukee*, 791 F.3d 709, 714 (7th Cir. 2015).

Finally, to the extent that Penninger challenges the district court's decision to award only one dollar in nominal damages for the default judgment against Blakely, we conclude that the court did not err. First, as explained above, the court found that Penninger did not suffer a physical injury (and Penninger does not contest this finding

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on appeal); thus, the court was correct not to award compensatory damages against Blakely for Penninger's alleged psychological injuries. *See* 42 U.S.C. § 1997e(e). Second, because Penninger did not establish at trial any malicious conduct by Blakely, or any other prison staff for that matter, he was not eligible to receive punitive damages against Blakely. *See Calhoun v. Detella*, 319 F.3d 936, 942 (7th Cir. 2003). Penninger thus was entitled only to nominal damages against Blakely. *Id.* at 941.

AFFIRMED