

NONPRECEDENTIAL DISPOSITION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 April 4, 2024*

Decided April 5, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-1807

JOHN M. ANDERSON,
*Plaintiff-Appellant,**v.*CHERYL JEANPIERRE, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-C-270

William C. Griesbach,
*Judge.***ORDER**

John Anderson, a Wisconsin prisoner, sued prison doctors and nurses under 42 U.S.C. § 1983, alleging that they were deliberately indifferent to his painful bladder condition. Anderson believes that the doctors wrongly discontinued his preferred treatment, and he sought a preliminary injunction compelling its resumption. The

* 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).

No. 23-1807

Page 2

district court denied his request, concluding that he had not demonstrated a reasonable likelihood of succeed on the merits. We affirm.

Anderson suffers from interstitial cystitis, a chronic condition causing bladder pressure and pain. Treatment options for interstitial cystitis may include medication (administered orally or injected into the bladder), nerve stimulation, physical therapy, bladder distention, surgery, and any combination of these. Effectiveness of these treatment options varies depending on the patient. Anderson attempted several treatments over the years without success.

In August 2020, Anderson, who is housed at Waupun Correctional Institution, was seen by an off-site urologist and prescribed gabapentin, a medication used to treat nerve pain. Gabapentin is a non-formulary medication with a high potential for misuse and diversion. To prevent inmates from storing gabapentin to abuse or sell to other inmates, Waupun imposes strict guidelines on its administration. Waupun doctors who wish to prescribe the medication must request approval from the prison's associate medical director, and inmates who wish to receive the medication must comply with the institution's "pain management/chronic disease program," which requires regular blood testing to monitor for misuse. Anderson agreed to the program and was approved to begin taking gabapentin.

He soon complained to Waupun's health-services unit that the medication was not helping, and his dosage was increased, eventually reaching the maximum dosage recommended by the urologist. Anderson reported that the medication at that dosage did "nothing," and that his bladder still felt "like a hot burning iron all day." After blood tests taken in December 2020 showed less gabapentin in Anderson's blood than would be expected if he were taking the medication as prescribed, his prison doctor, Cheryl Jeanpierre, ordered a urine test. Anderson's medical records state that he was "unable" to provide a specimen for the test. Dr. Jeanpierre discontinued his prescription.

Anderson denied misusing the medication. He believed that the low-level gabapentin readings from his blood tests were caused by laxatives he was taking. He contacted a laboratory in Utah and received back a letter stating, "Antacids ... are known to reduce the blood concentration of gabapentin by 20% in patients; however, it is unclear whether laxatives will have a similar drug-drug interaction." After consulting with the prison's pharmacist, Dr. Jeanpierre determined that Anderson's laxative use did not likely cause his low test results, and she suggested that he try a different medication to treat his bladder. Anderson continued to deny misusing

gabapentin and requested that his prescription be reinstated. Dr. Jeanpierre discussed the matter with him and put in another request for gabapentin, but the request was denied by the prison's associate medical director, Dr. Laura Sukowaty. (Patients typically are not eligible to receive gabapentin if they have a history of misusing it.)

Anderson continued to receive appointments with off-site urologists, some of whom recommended that he resume taking gabapentin or other non-formulary medications. Dr. Jeanpierre made a request for a non-formulary medication. But Dr. Sukowaty denied the request and instructed her to first try oxybutynin, a medication commonly used to treat overactive bladder. In May 2021, Anderson began receiving oxybutynin.

Anderson then sued Dr. Jeanpierre and Dr. Sukowaty, along with other prison doctors and nurses, alleging that they were deliberately indifferent to his serious medical needs by failing to carry out the recommendations of his off-site urologists to treat his condition. *See* 42 U.S.C. § 1983. He also sought a preliminary injunction compelling the defendants to follow the off-site urologists' recommendations, reinstate him in the pain management/chronic disease program, and "cease offering [and] prescribing weak past failed medication options." He argued that Dr. Jeanpierre and Dr. Sukowaty had removed him from the program based on "phony" medical records and "lies" that "laxatives do not decrease gabapentin blood levels or absorptions."

The district court granted the defendants' motion for partial summary judgment and denied Anderson's preliminary-injunction motion. (Because Anderson has taken an interlocutory appeal of the denial of his preliminary-injunction motion, we say nothing more about the court's partial summary-judgment ruling.) As for the preliminary injunction, the court concluded that Anderson was not likely to succeed on the merits of his Eighth Amendment claim. The court, noting that the defendants had been treating Anderson with alternative medication, explained that Anderson did not have a constitutional right to his preferred choice of medication. And to the extent different doctors disagreed over the reasons for the low level of gabapentin in his bloodstream, the court stated that disagreement among doctors could not establish a deliberate indifference claim. The court added that discontinuing a medication based on suspected abuse is not deliberate indifference.

On appeal, Anderson first challenges the conclusion that he failed to demonstrate a reasonable likelihood of success on the merits—one of the requirements for obtaining a preliminary injunction. *See Orr v. Shicker*, 953 F.3d 490, 501 (7th Cir. 2020) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). To succeed on a deliberate-

indifference claim, Anderson had to show that he suffered from an objectively serious medical condition and that prison officials knew of and disregarded an excessive risk to his health. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016) (en banc). We assume for the sake of discussion that Anderson's bladder condition poses a serious risk to his health.

We turn, then, to whether Anderson presented enough evidence to allow a reasonable factfinder to infer that his medical providers acted with deliberate indifference. We understand him to argue that the defendants acted with deliberate indifference by treating him with alternative medication, oxybutynin—a course of treatment that had failed to provide relief and that they knew to be ineffective. *See, e.g., Goodloe v. Sood*, 947 F.3d 1026, 1031 (7th Cir. 2020) (citing *Greeno v. Daley*, 414 F.3d 645, 654–55 (7th Cir. 2005)).

The record does not support this contention. The evidence that Anderson cites—a non-defendant doctor's 2017 request that Anderson be approved for a non-formulary medication, given his prior lack of success with oxybutynin—does not show that the defendants *knew* oxybutynin to be ineffective. This is especially so, since, as Dr. Jeanpierre asserted in a declaration, the ineffectiveness of oxybutynin in one combination of treatments for interstitial cystitis does not mean that it cannot be effective in another. Nor does the 2017 request show that the decision to prescribe oxybutynin was such a substantial departure from accepted professional standards that it demonstrated a failure to exercise medical judgment. *See Brown v. Osmundson*, 38 F.4th 545, 551 (7th Cir. 2022).

Anderson also disputes the district court's characterization that there was a disagreement among doctors over the reason that low levels of gabapentin appeared in his bloodstream. He disparages the defendants' opinions as "phony," and he again alludes to the effect of laxatives on gabapentin absorption, as set forth in the letter from the Utah laboratory. This argument is meritless. The laboratory's letter says it is "unclear" whether his laxative would interfere with gabapentin absorption. And nothing else in the record undermines Dr. Jeanpierre's or Dr. Sukowaty's opinion that his low gabapentin levels resulted from misuse rather than consumption of laxatives.

Because Anderson cannot show a likelihood of success on the merits, we need not address the other prerequisites to obtain a preliminary injunction. *See Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008), *abrogated on other grounds by Nken v. Holder*, 556 U.S. 418, 434 (2009).

No. 23-1807

Page 5

We have considered Anderson's remaining arguments (e.g., challenging factual findings that were clearly supported by the record and misconstruing the district court's order), but none have merit.

AFFIRMED