

NONPRECEDENTIAL DISPOSITION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 October 22, 2024*

Decided October 23, 2024

BeforeMICHAEL B. BRENNAN, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1366

NORRIS E. PEGUES,
*Plaintiff-Appellant,**v.*KARL HOFFMANN, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 22-cv-352-jdp

James D. Peterson,
*Chief Judge.***ORDER**

Norris Pegues, a Wisconsin prisoner who is paraplegic, alleges that members of the healthcare staff at Wisconsin's New Lisbon Correctional Facility violated his rights under the Eighth Amendment by failing to provide him with a medical-grade mattress

* 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).

to address pressure sores. *See* 42 U.S.C. § 1983. The district court entered summary judgment for the defendants. Because a reasonable jury could not conclude that any defendant was deliberately indifferent to Pegues's serious medical need, we affirm.

We draw our account from the record at summary judgment, which we view in the light most favorable to Pegues, the nonmoving party. *See Thomas v. Blackard*, 2 F.4th 716, 720 (7th Cir. 2021). In January 2016, Pegues was transferred to New Lisbon from another prison. A social worker at New Lisbon emailed Candace Warner, the manager of the prison's Health Services Unit, to inform her that Pegues required an "extra mattress." Upon learning that Pegues needed the mattress because he was paraplegic, Warner asked staff from the transferring facility to send Pegues's mattress along with him; otherwise, he would receive a standard three-inch single mattress at New Lisbon. The New Lisbon employee who facilitated the transfer (not a defendant) failed to ensure that Pegues's mattress accompanied him.

A few months later, Pegues submitted a health-services request asking for a thick mattress to help prevent pressure sores. Lynn Dobbert, a nurse, responded that the Unit does not provide thick mattresses. Pegues renewed his request in July 2017, and Dobbert again responded that the Unit does not provide special mattresses and that Pegues would have to stay active and change positions to prevent sores.

On July 24, 2017, health-services staff examined Pegues for an open sore on his buttocks. A non-defendant nurse encouraged him to stay off his buttocks and to change positions frequently, provided him with two extra pillows for positioning, and stated that he should use a "blue/black (thick) mattress." A few days later, a doctor, Karl Hoffmann, treated Pegues for a pressure wound. Dr. Hoffmann continued to treat Pegues over the next month, and Pegues's wound improved.

On August 4, 2017, Pegues filed an inmate complaint requesting a double or medical mattress. When an inmate complaint examiner contacted Warner (given her role as the Unit manager), she stated that the Unit does not provide special mattresses. Pegues's complaint was dismissed, but the reviewing authority modified the dismissal and stated that medical mattresses are available if an inmate meets special qualifications and it is medically necessary. Medical mattresses must be authorized by an advanced care provider—a physician, physician's assistant, or advanced nurse practitioner.

Nearly two years passed after the denial of Pegues's complaint without Pegues presenting to the Unit with a pressure wound. Then, in July 2019, Pegues went to the

emergency room for a possible stage 2 pressure ulcer, and he remained in the hospital for a week. After his discharge, Pegues was moved to the infirmary at Dodge Correctional Institution in Waupun—the only hospital-like setting in the Wisconsin Corrections system—where he received specialized wound care and a therapeutic mattress to decrease the pressure on his wounds. Pegues received treatment at Dodge for the next ten months.

Pegues arrived back at New Lisbon on May 12, 2020 (during the COVID-19 pandemic) with a “nearly healed” wound, and during his two-week quarantine in the Unit, he had a medical mattress. Dr. Hoffmann informed Pegues that he would be issued a medical mattress when he was released into the general population. Medical records from Pegues’s quarantine reveal that his wound grew while he was housed in the Unit and that the wound-care specialist discussed Pegues’s “care and treatment needs” with Dr. Hoffmann.

Pegues was placed in the general population on May 27, 2020, but he was not provided with a medical mattress, though one had been ordered for him. The wound-care specialist examined Pegues on June 2 and charted that his wound had worsened. Two days later, after additional deterioration, the specialist and Dr. Hoffmann decided to move Pegues back to the Unit so he could use a hospital bed and mattress. It is not clear from the record when Dr. Hoffmann first knew that Pegues was using a standard mattress (despite the district court’s statement that Pegues was returned to the Unit “when it was discovered” that the prison did not have a medical mattress for him).

Pegues was soon transferred back to the infirmary at Dodge for wound care. A doctor there recorded that Pegues’s wound had “increased” in size, drainage, and odor in the short time he had spent back at New Lisbon. Pegues remained at Dodge for five months for treatment. When he returned to New Lisbon, his medical mattress arrived with him. Pegues’s problem with pressure wounds persisted, and in 2021 he had surgery to repair a wound on his buttocks.

In this lawsuit, Pegues alleges that his pressure wound failed to heal and worsened because, out of deliberate indifference, Dr. Hoffmann, Warner, and Dobbert failed to ensure that he was provided with the mattress he needed. In his complaint he alleged that their actions violated the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act; he also brought a claim of medical negligence under Wisconsin law. At screening under 28 U.S.C. § 1915A, the district court allowed Pegues to proceed with only his Eighth Amendment and negligence

claims because prisoners cannot challenge a medical treatment decision under disability-discrimination statutes. *See Reed v. Columbia St. Mary's Hosp.*, 915 F.3d 473, 486 n.6 (7th Cir. 2019); *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996).

The defendants later moved for summary judgment, arguing that they provided adequate medical care for his wounds and that a medical mattress would not have prevented Pegues's pressure sores. The district court ruled that no reasonable jury could conclude that the defendants knew of and disregarded an excessive risk to Pegues's health and therefore ruled for the defendants on the constitutional claim. The court then relinquished jurisdiction over Pegues's negligence claim.

On appeal, Pegues argues that the district court did not properly draw inferences in his favor and that he raised a genuine dispute of material fact as to whether the defendants were deliberately indifferent. We review the summary judgment decision *de novo*. *Thomas*, 2 F.4th at 720. To establish a violation of his Eighth Amendment rights, Pegues must demonstrate that: (1) he has an objectively, sufficiently serious medical condition; and (2) the defendants knew of and disregarded an excessive risk to his health. *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994). It is undisputed that Pegues's paraplegia and resulting sores are a serious medical condition. But on the second prong, Pegues bears the burden of showing that his medical treatment was so deficient that it reflected an absence of professional judgment. *See Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 763 (7th Cir. 2021). Deliberate indifference requires a showing higher than negligence or even malpractice. *See Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014).

As to the claim relating to Pegues's first stint at New Lisbon from 2016 to 2017, he has not produced sufficient admissible evidence from which a reasonable jury could find that Warner or Dobbert was deliberately indifferent to his medical needs. Although Warner knew Pegues required a special mattress, she did not handle his transfer intake, and the actions of another staff member cannot be imputed to Warner. *See Colbert v. City of Chi.*, 851 F.3d 649, 657 (7th Cir. 2017). And although both Warner and Dobbert incorrectly informed Pegues that thick mattresses were unavailable by New Lisbon policy, a policy violation is not sufficient to establish a constitutional harm. *See Pulera v. Sarzant*, 966 F.3d 540, 551 (7th Cir. 2020). There is no evidence that Warner and Dobbert were anything but mistaken about whether an inmate could obtain a special mattress through the medical team. Moreover, an official "cannot be held liable for failing to do something [s]he had no authority to do," and neither Warner nor Dobbert had the authority to order mattresses for prisoners because they are not advanced care providers. *Hunter v. Mueske*, 73 F.4th 561, 566 (7th Cir. 2023). The record also shows that

Dobbert responded to Pegues's concern about pressure sores and advised him how to avoid sores; her actions are therefore inconsistent with a conscious disregard for his medical need. *See Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 460 (7th Cir. 2020) (optometrist, who "appropriately monitored and treated [plaintiff's] various eye conditions," was not deliberately indifferent even though plaintiff was delayed in receiving contact lenses).

Pegues's evidence also fails to support an Eighth Amendment claim against Dr. Hoffmann for the period between Pegues's hospitalization in 2019 and his transfer back to Dodge in June 2020. True, Dr. Hoffmann—who supervises "the development and implementation of treatment protocols" at New Lisbon—promised Pegues a medical mattress that he did not receive, and there is some evidence that Dr. Hoffmann was aware that no medical mattress was ready for Pegues when he left quarantine for the general population in May 2020. But it was only a matter of days before Dr. Hoffmann agreed that Pegues had to go back to the Unit. Delays in receiving prescribed treatment can give rise to a deliberate indifference claim, *see Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 489 (7th Cir. 2022), but "delay alone is not enough," *Clemons v. Wexford Health Sources, Inc.*, 106 F.4th 628, 636 (7th Cir. 2024) (cleaned up). At a minimum, Pegues must show that Dr. Hoffmann knew about Pegues's rapidly worsening wound without a medical mattress to establish that he acted with deliberate indifference. *See Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010).

Instead, the record shows that Dr. Hoffmann "responded reasonably" to Pegues's deteriorating wound after the wound specialist spoke to him on June 4, and this negates an assertion of deliberate indifference even if the doctor did not successfully prevent the harm. *Reck*, 27 F.4th at 483 (citation omitted). There is no evidence that—even if Dr. Hoffmann knew there was not an appropriate mattress ready for Pegues yet—he had reason to know the existing wound would worsen so quickly in the interim. Further, the record as a whole shows that Dr. Hoffmann provided diligent care to Pegues, treating his wounds and providing advice on how to prevent wounds from forming. Therefore, a reasonable jury could not conclude that Dr. Hoffmann was deliberately indifferent to Pegues's serious medical need. *See Pyles*, 771 F.3d at 409; *Minix*, 597 F.3d at 831.

AFFIRMED