

NONPRECEDENTIAL DISPOSITION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 March 28, 2025*

Decided April 3, 2025

BeforeFRANK H. EASTERBROOK, *Circuit Judge*KENNETH F. RIPPLE, *Circuit Judge*MICHAEL Y. SCUDDER, *Circuit Judge*

No. 24-2623

BOBBIE TORRY,
*Plaintiff-Appellant,**v.*LISA ALBRECHT, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 21-CV-1429-JPS

J. P. Stadtmueller,
*Judge.***ORDER**

Bobbie Torry, a Wisconsin prisoner, contends that prison officials at Fox Lake Correctional Institution were deliberately indifferent to his kidney condition and thus violated his Eighth Amendment rights. *See* 42 U.S.C. § 1983. The district court entered summary judgment for the defendants. It correctly ruled that summary judgment for

* 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).

one defendant was proper because Torry failed to exhaust his administrative remedies, and summary judgment was warranted for the others because no reasonable juror could find that those defendants were deliberately indifferent to Torry's kidney condition. We thus affirm.

We construe the facts in the light most favorable to Torry, the party opposing summary judgment. *See Petties v. Carter*, 836 F.3d 722, 727 (7th Cir. 2016) (en banc). Beginning in 2017, Torry was housed at Fox Lake Correctional Institution, which periodically tests for lead in its water supply. Four years later, in May 2021, Dr. Lyle Weintraub told Torry that recent lab results showed a slight decrease in Torry's kidney function: The rate at which his kidneys filtered blood was below normal, and the decrease, Weintraub speculated, could be caused by the drinking water at the prison.

Torry responded with a grievance about the cause of his kidney condition. Citing the statement from Weintraub, he complained that "the drinking water cause[d] or contributed to [his] 'decrease in kidney function/kidney disease.'" The grievance examiner contacted Lisa Albrecht, the assistant manager for health services. Albrecht, a registered nurse, reviewed Torry's records and reported to the examiner that, a few days after Torry filed his grievance, he had an ultrasound exam on his kidneys. The result was normal, and no evidence supported Torry's claim that the water at the prison contributed to his decrease in kidney function. The examiner then dismissed the grievance, and Torry administratively appealed. He argued that lead in the water was harming his kidneys and that testing showed the water had been contaminated with lead. Torry did not mention Weintraub in his appeal, and it too was dismissed.

Four months later, Torry asked for but did not receive a blood test for lead, prompting a second grievance. He complained that Candace Whitman, the manager of health services, refused to order a blood test for him and reasserted that lead in the water was harming his kidneys. Whitman, who is a registered nurse, later responded that the prison does not test blood for lead, that blood tests are not ordered based on a patient's request, and that periodic water testing showed that the water was safe to drink. With that response, and another response from Albrecht, who confirmed that no evidence supported Torry's request for a blood test, the grievance was denied. Torry appealed, arguing that his kidneys functioned well before his transfer to Fox Lake but not after. The appeal was also dismissed.

Torry's next step was this suit. He alleged that Weintraub, Albrecht, Whitman, and Michael Meisner, the warden, violated his Eighth Amendment rights by their deliberate indifference to his kidney condition. The parties stipulated that Torry's suit

was limited to the treatment of his kidneys, not the remediation of lead in the prison's water. The defendants later moved for summary judgment. Weintraub argued that, for the claim against him, Torry had failed to exhaust his administrative remedies; the other defendants argued that no jury could find that they were deliberately indifferent to Torry's medical needs.

The district court granted the defendants' motions for summary judgment. It first ruled that Torry failed to exhaust his claim against Weintraub because his grievances did not complain about Weintraub's care. Next, the court explained that a jury could not find that the other defendants were deliberately indifferent to Torry's medical condition because they had limited authority to treat Torry but otherwise acted reasonably. Torry moved to alter or amend the judgment. *See* FED. R. CIV. P. 59(e). He argued that administrative remedies for his claim against Weintraub were unavailable and that the district court wrongly concluded that the other defendants had no authority to treat Torry's kidney condition. The court denied that motion.

We review the decision on summary judgment *de novo*, *Petties*, 836 F.3d at 727, and the decision on the motion to alter or amend the judgment for abuse of discretion, *Barrington Music Products, Inc. v. Music & Arts Center*, 924 F.3d 966, 968 (7th Cir. 2019).

We begin with the ruling that Torry did not exhaust his administrative remedies for his claim that Weintraub was deliberately indifferent to his kidney condition. The Prison Litigation Reform Act requires inmates to exhaust available administrative remedies before suing in federal court. *See* 42 U.S.C. § 1997e(a). Therefore, if Torry's suit contains a claim that he has not previously pursued in the prison's grievance process, the claim fails. *See Bowers v. Dart*, 1 F.4th 513, 517–18 (7th Cir. 2021). That is the case here: Torry did not file a grievance objecting to Weintraub's treatment of his kidneys. In his first grievance, Torry blamed the prison's drinking water for his decreased kidney function. He mentioned Weintraub, but only to suggest that the doctor, too, agreed with him. And Torry's appeal from the dismissal of this grievance focused again on the effect of the prison's drinking water on his kidneys. It did not even mention Weintraub. Likewise, Torry's second grievance, and his appeal of its denial, complained only about Whitman's refusal to order a blood test for lead, not Weintraub's treatment of his kidneys. Thus, Torry's grievances did not provide the required notice that he was dissatisfied with Weintraub's treatment of his kidneys, rendering his Eighth Amendment claim against Weintraub unexhausted. *See Jackson v. Esser*, 105 F.4th 948, 960 (7th Cir. 2024).

As he argued in his post-judgment motion, Torry responds that administrative remedies were not available to him. There are circumstances that render administrative remedies unavailable to inmates. *See Ross v. Blake*, 578 U.S. 632, 643–44 (2016) (identifying three examples). Torry does not allege that the grievance process was, for example, a dead end or too opaque. *See id.* He instead submits that, because he changed course during the pendency of his lawsuit to challenge the medical treatment he received, instead of the prison's water quality, he could not have exhausted administrative remedies on his medical claim. However, a plaintiff's changing his legal theory after he files his grievance does not render administrative remedies retroactively unavailable. *See Schillinger v. Kiley*, 954 F.3d 990, 995–96 (7th Cir. 2020). Summary judgment in favor of Weintraub for lack of exhaustion was thus proper.

Torry next argues unpersuasively that the district court erroneously entered summary judgment for the other defendants. To get to a trial on his claim that the defendants violated his rights under the Eighth Amendment, he must provide evidence that would allow a reasonable jury to conclude that they were deliberately indifferent to a serious medical condition. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). But a jury could not find that the nurses, Albrecht and Whitman, deliberately ignored Torry's medical needs. Nurses comply with the Eighth Amendment when they defer to ongoing medical treatment, as long as their deference is not "unthinking." *Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 485 (7th Cir. 2022) (quoting *Berry v. Peterman*, 604 F.3d 435, 443 (7th Cir. 2010)). Albrecht and Whitman properly deferred here: They reasonably reviewed Torry's medical records, observing that he had received an ultrasound exam that revealed no abnormalities in his kidneys and noting that no other evidence suggested the water at the prison was harming his kidneys. Likewise, a rational jury could not find that Meisner, the warden, was deliberately indifferent to Torry's kidney function. Prison officers without medical training, like Meisner, who delegate grievances about medical care to other qualified staff are not deliberately indifferent for doing so. *Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) ("[T]he Warden of each prison[] is entitled to relegate to the prison's medical staff the provision of good medical care."); *Johnson v. Doughty*, 433 F.3d 1001, 1011 (7th Cir. 2006) (holding that the warden was not deliberately indifferent when he "reasonably relied on the expertise of the medical professionals").

Torry replies that these defendants had the authority to order medical tests or make referrals to other doctors. But even if they had this authority, Torry may not demand that they use it to give him his preferred medical treatment, see *Pyles v. Fahim*,

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771 F.3d 403, 412 (7th Cir. 2014), where, as we have said, the evidence conclusively shows that they reasonably deferred to the treatment he was receiving. *See id.* at 409.

AFFIRMED