

NONPRECEDENTIAL DISPOSITION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 January 13, 2026*

Decided January 13, 2026

BeforeMICHAEL B. BRENNAN, *Chief Judge*MICHAEL Y. SCUDDER, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 25-1506

LEROY R. WHITTENBERGER,
*Plaintiff-Appellant,**v.*DANIEL L. LA VOIE, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 2:23-cv-01589-BHL

Brett H. Ludwig,
*Judge.***ORDER**

Leroy Whittenberger, a Wisconsin prisoner, asserts that two prison doctors and three prison nurses violated his rights under the Eighth Amendment by delaying his treatment for a knee injury. *See* 42 U.S.C. § 1983. The district court entered summary

* 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).

judgment against him after concluding that no jury could reasonably find that any defendant was deliberately indifferent to his medical condition. We affirm.

We recount the facts in the light most favorable to Whittenberger, the party opposing summary judgment. *See Sanders v. Moss*, 153 F.4th 557, 561 (7th Cir. 2025). Whittenberger was housed at New Lisbon Correctional Institution in New Lisbon, Wisconsin, when, in May 2021, he injured his right knee while exercising. Five days later, a nondefendant nurse examined Whittenberger's knee and left a message summarizing the injury for Dr. Daniel La Voie, the Wisconsin Department of Corrections' Medical Director who at the time was serving as an off-site doctor for the prison. Based on the information provided to him, Dr. La Voie believed that Whittenberger injured the soft tissue of his knee, which would heal with ice and rest. About four weeks later, another nondefendant nurse reported to Dr. La Voie that Whittenberger's condition had not improved and asked him to order an x-ray and physical therapy. Dr. La Voie ordered physical therapy but not an x-ray, explaining later in a declaration that the nurse did not describe any functional limitation to Whittenberger's knee.

But Whittenberger's pain persisted, so he submitted another request to the health services unit. Whittenberger saw Nurse Lisa Payne, who looked at his knee, conveyed word of Dr. La Voie's treatment plan, and referred him to an on-site doctor.

Whittenberger's physical therapy proved ineffective, and he soon was evaluated by Dr. Barry Daughtry, who became his primary-care provider for the next seven months. Dr. Daughtry ordered an x-ray and reported that it showed an "uncertain or old fracture." He then ordered an MRI of Whittenberger's knee and referred him to an off-site surgeon, who requested a bone-density study. Several months later Whittenberger, having yet to receive the MRI, submitted a health-service request to Dr. Daughtry. The doctor then inquired about the status of the MRI and learned that one had been scheduled. Soon thereafter, in March 2022, Whittenberger received the MRI, which revealed a slight fracture. (That same day, unrelatedly, Dr. Daughtry stopped working at the prison and provided no further care to Whittenberger.)

A few weeks later, in April 2022, Whittenberger was evaluated by an orthopedic surgeon. After other care proved ineffective, Whittenberger received surgery for a partial knee replacement in January 2024.

Whittenberger filed this medical deliberate-indifference suit under 42 U.S.C. § 1983. Whittenberger asserted that Dr. La Voie delayed treatment by misdiagnosing his

No. 25-1506

Page 3

knee injury as a soft tissue injury; that Nurse Payne delayed his treatment by failing to schedule his appointment with an on-site doctor; and that Dr. Daughtry and Nurses Melissa McFarlane and Koreen Frisk (both of whom responded to his health-service requests about the wait time to receive the MRI and bone-density study) delayed his treatment because they did not schedule his diagnostic tests.

The district court concluded that no reasonable jury could find that the defendants were deliberately indifferent and granted the defendants' motions for summary judgment. Regarding Dr. La Voie, the court explained that his involvement was minimal—he only made a diagnosis based on information given to him and formulated a treatment plan—and any misdiagnosis was, at most, non-actionable negligence because there was no evidence that he knew Whittenberger's knee injury was not a soft-tissue injury. As to Dr. Daughtry, the court determined that his responsiveness to Whittenberger's concerns—ordering diagnostic tests, referring Whittenberger to an offsite specialist, and even contacting others on the progress of an MRI that had yet to be administered—was inconsistent with deliberate indifference. As for Nurse Payne (who evaluated Whittenberger in July 2021 in response to his complaints of continued knee pain, explained to Whittenberger why Dr. La Voie did not think an x-ray was needed, and placed an order for him to be seen by an onsite provider), the court concluded that no reasonable jury could find that she acted with deliberate indifference by deferring to Dr. La Voie's plan of care. And regarding Nurses McFarlane and Frisk, the court determined that no jury could reasonably find that they were deliberately indifferent simply because they communicated information sought by Whittenberger about scheduled appointments or tests.

On appeal, Whittenberger does not engage with the district court's reasons for granting summary judgment and, instead, simply recites the facts that he says took place. But the district court wrote a thorough opinion addressing Whittenberger's claims under the correct legal standards, and we have little to add. We have reviewed the record and affirm the judgment substantially for the district court's reasons. "Deliberate indifference occurs when a defendant realizes that a substantial risk of serious harm to a prisoner exists, but then disregards that risk," and the standard "reflects a mental state ... properly equated with reckless disregard." *Perez v. Fenoglio*, 792 F.3d 768, 776–77 (7th Cir. 2015) (citations omitted). As the court explained, Whittenberger failed to provide evidence from which a jury could reasonably conclude that any defendant was deliberately indifferent to his knee injury.

AFFIRMED