

individual with diminished capacity, despite posing a threat to others, would have been excessive. Here, the court sided with the defendants' qualified immunity. To address Hamilton County's accountability under § 1983, the court recognized that a county cannot be liable for this claim unless a constitutional violation by its officers is established.

The court also affirmed the ruling that Mrs. Roell failed to establish a viable claim under the ADA because she did not produce any evidence that the defendants intentionally discriminated against Mr. Roell due to his mental illness. Mrs. Roell argued that steps to de-escalate the situation should have been taken, but whether Title II of the ADA applies in the context of an arrest had not been addressed by the courts. Notwithstanding, based on the facts of the case, such as the deputies facing challenging circumstances while attempting to restrain Mr. Roell, Hamilton County was entitled to summary judgment; the proposed accommodations, such as verbal de-escalation, were unfeasible given Mr. Roell's hostile presentation.

Dissent

Judge Moore dissented on the matter of granting summary judgment to the three sheriff's deputies in Mrs. Roell's § 1983 claim. The essence of her reasoning was: "If it is apparent to officers that an individual is unarmed and mentally unstable, then the officers must de-escalate and may not use as much force as would be permissible when confronted with an individual who was either mentally stable or armed" (*Roell*, p 490). Summary judgment is not appropriate, she continued, when facts are ambiguous; for example, whether Mr. Roell was armed with a weapon and the degree of his aggressiveness.

Discussion

This case was brought about because of an arrest of a person with mental illness who died after law enforcement used physical force to detain him. This affords us the opportunity to examine policy and procedures when law enforcement deals with citizens with psychiatric or other disabilities.

While the court supported the deputies' defense in the circumstances of the incident, questions remain about what a reasonable official would do under Ohio procedures. How do policies or procedures guide officers' actions, and do they adequately prepare them to deal with citizens in crisis in the least forceful manner? How does the level of threat that

officers perceive fit into the implementation of policy? Do their procedures, for example, help officers determine under what circumstances a garden hose might be regarded as a deadly weapon, as mentioned in the dissenting opinion.

An important feature of this case is that "the deputy coroner determined that the cause of Roell's death was 'excited delirium due to schizoaffective disorder' and that the manner of his death was natural" (*Roell*, p 478). Presumably, then, the use of force was not material to Mr. Roell's death, which was caused by the condition in which the deputies found him. Because the coroner's determination foreclosed inquiry about the manner of death, the decision does not provide a more nuanced view of the medical events leading to Mr. Roell's death. Expert testimony might have offered rates of deaths associated with tasings and "excited delirium" in the context of schizoaffective disorder. The decision provides no evidence about Mr. Roell's health prior to the incident, aside from his psychiatric diagnosis, nor were toxicology results provided that might shed light on a medical cause of delirium. Therefore, it is not clear medically whether the tasing and restraint were contributory to Mr. Roell's death. We wonder whether the appellate court might have ruled differently (i.e., by remanding the matter for trial) if these subtleties had been illuminated by further analysis of the details surrounding Mr. Roell's death.

Deliberate Indifference and Negligence Claims in a Correctional Facility

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Seventh Circuit Court of Appeals Affirmed the Dismissal of a Prisoner's Eighth Amendment and Negligence Claims Where Clinicians Sought Consultation

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In *Wilson v. Adams*, 901 F.3d 816 (7th Cir. 2018), the Seventh Circuit Court of Appeals affirmed the district court’s dismissal of a prisoner’s Eighth Amendment claims and state-law negligence claim. The court held that insufficient evidence was presented, both in the medical records and in the form of expert testimony, to determine that the defendants had been deliberately indifferent or negligent in their treatment of the prisoner’s mental and physical health.

Facts of the Case

Donald Wilson was incarcerated at the Oshkosh Correctional Institution in December 2009 for violating his parole. Shortly thereafter, he requested treatment for cognitive difficulties. A psychology supervisor, Dr. Lori Adams, noting that Mr. Wilson had previously been diagnosed with a possible cognitive disorder, referred him to a psychiatrist. Over time, the psychiatrist concluded that Mr. Wilson was likely feigning his symptoms in the presence of medical staff and reported these findings to Dr. Adams. Nevertheless, Dr. Adams sent Mr. Wilson to a specialized mental health facility for further testing and observation. After eight months, no evidence of Alzheimer’s disease or dementia was found, and Mr. Wilson was returned to Oshkosh.

Mr. Wilson also reported numerous physical complaints, including neck, throat, and back pain. His primary care provider at Oshkosh, Dr. Patrick Murphy, coordinated with several specialists to diagnose and address Mr. Wilson’s physical symptoms. Two endoscopies revealed that hardware from an earlier spinal fusion surgery was the likely cause of Mr. Wilson’s symptoms. Dr. Murphy referred Mr. Wilson to a surgeon and continued a soft diet, based on the recommendation of a speech pathologist. He also changed Mr. Wilson’s pain management regimen from naproxen to daily extra-strength acetaminophen.

In April 2013, a surgeon stated that the spinal fusion hardware could not be removed without significant risk. Mr. Wilson requested a second opinion. One month later, additional doctors concurred that the probable cause of Mr. Wilson’s pain was the spinal fusion hardware. Mr. Wilson was given a wheelchair, an escort to push the wheelchair, an antibiotic, narcotic pain medication, and a nutritional supplement. At follow-up appointments, bronchoscopy, airway exam, lab

tests, transthoracic echocardiogram, and chest CT scan were recommended. Dr. Murphy ensured that the procedures were scheduled and performed.

In 2015, a court granted Mr. Wilson’s request to visit a doctor of his choosing for a second opinion regarding surgery. After tests, the evaluating surgeon, Dr. Kalmjit Paul, determined that surgery would not improve Mr. Wilson’s condition and that he would best be managed with “conservative treatment,” pain medication included.

Mr. Wilson sued Dr. Adams, Dr. Murphy, and the Wisconsin Department of Corrections for violating the Americans with Disabilities Act (Americans with Disabilities Act Amendments Act, Pub. L. No. 110–325 (2008)) and the Rehabilitation Act (Rehabilitation Act Amendments, Pub. L. No. 102–569 (1992)), for violating his Eighth Amendment rights on the basis of deliberate indifference to his medical needs, and for negligence under state law. The district court granted summary judgment for the defendants in full, and Mr. Wilson appealed the deliberate indifference and negligence decisions.

Ruling and Reasoning

Regarding his Eighth Amendment claim, Mr. Wilson asserted that Dr. Adams was deliberately indifferent in the treatment of his mental health and that Dr. Murphy was deliberately indifferent in the treatment of his physical health. The Seventh Circuit Court of Appeals determined that neither doctor was deliberately indifferent to Mr. Wilson’s mental and physical health treatment needs.

The appellate court pointed out that a deliberate indifference claim requires proof of an objectively serious medical condition and that the defendant was deliberately indifferent to that condition. The court explained that a defendant is deliberately indifferent when disregarding a known condition that poses an excessive risk to inmate health or safety. Mr. Wilson’s claim that Dr. Adams was deliberately indifferent in treating his Alzheimer’s disease or dementia failed because Mr. Wilson did not demonstrate those conditions. Further, the record reflected Dr. Adams’ diligent investigation of Mr. Wilson’s mental condition and the subsequent absence of a mental health diagnosis. Accordingly, the district court did not err in granting summary judgment for Dr. Adams.

Regarding Mr. Wilson’s deliberate indifference claim against Dr. Murphy, the appellate court consid-

ered his neck, back, and throat pain as constituting a requisite serious medical condition. The court noted that the record contained significant evidence of Dr. Murphy's extensive efforts to diagnose Mr. Wilson's pain and to arrange diagnostic tests and procedures recommended by specialists. The court viewed Mr. Wilson's strongest argument to be that Dr. Murphy was indifferent in his pain management during Mr. Wilson's work-up. The court stated that continuing the same treatment despite no results could constitute indifferent treatment. However, Mr. Wilson presented no evidence that Dr. Murphy withheld more effective treatment or chose an easier and less efficacious treatment plan without exercising professional judgment. The court also emphasized that none of the consulted specialists suggested that the pain management regimen was inadequate.

The court also rejected Mr. Wilson's argument that Dr. Murphy's failure to follow a pulmonologist's recommendation that a neurologist evaluate hand numbness constituted deliberate indifference. The court noted that Mr. Wilson had been seen by a neurologist earlier in the year, and that Dr. Murphy believed it best to proceed by managing his pain and monitoring his condition. The court acknowledged that a jury could infer a physician's conscious disregard of risk by deciding to ignore a specialist's instructions, but that did not require a physician to always follow a specialist's recommendation. The court pointed out that deference should be given to a physician's treatment decisions unless no minimally competent professional would have made the decisions under similar circumstances. In this case, Mr. Wilson presented no evidence that Dr. Murphy's decision was a significant departure from accepted clinical practice.

Mr. Wilson claimed that Dr. Murphy delayed a medical appointment for three and a half months. The court agreed that delaying treatment could be evidence of deliberate indifference; however, Mr. Wilson was unable to provide the required proof that his delayed appointment prolonged or exacerbated his condition. Accordingly, the appellate court held that the district court did not err in granting summary judgment for Dr. Murphy.

Finally, on Mr. Wilson's state-law negligence claim, the court of appeals concluded that Mr. Wilson's failure to provide expert testimony defeated his claim. Mr. Wilson argued that the report from the surgeon, Dr. Paul, should have been treated as expert testimony; however, the appellate court held that the

report was insufficient as expert testimony because it did not contain an opinion related to the standard of care or whether that standard had been followed. As a result, the appellate court affirmed summary judgment for the defendants on all claims.

Discussion

This case serves as a prudent reminder of the utility of expert testimony in both medical negligence and constitutional deliberate indifference claims. Moreover, it underscores that, to meet the requirements of admissibility to the court, such testimony must include specific and relevant information that is useful to the jury.

The specific requirements of expert testimony in medical malpractice claims may vary with jurisdiction. If the facts and questions of the case fall within average jurors' understanding, however, expert testimony may not be required. In the majority of cases, expert testimony is necessary to explicate the standard of care and whether a deviation from it resulted in damages to a patient.

For constitutional deliberate indifference claims, by contrast, evidence of mere negligence is insufficient. In the correctional setting, failure to evaluate, diagnose, and treat presenting symptoms may constitute a violation of the Eighth Amendment if it can be shown that a health care provider ignored a prisoner's medical needs. Case law has established that an assertion of deliberate indifference must be corroborated with evidence that there was "... 'an objectively serious medical condition' and that the 'defendant was deliberately indifferent to that condition'" (*Wilson*, p 820, citing *Petties v. Carter*, 836 F.3d 722 (7th Cir. 2016), p 728).

Expert testimony plays a central role in elucidating the presence of an objectively serious medical condition, the standard of care for that condition, and whether the standard was met. Deference is given to the medical decision-making process. As illustrated in this case, the choice to set aside a consultant's recommendations or to continue the same treatment despite no results can be considered deliberate indifference depending on the clinical circumstances. Those decisions are not deemed deliberately indifferent if they are not considered a significant departure from clinical standards of care. Expert testimony is necessary for the fact finder to make that determination in both negligence and deliberate indifference claims. This

case reinforces the importance for expert witnesses to carefully formulate their opinions because the information provided must fall within required jurisdictional standards.

Negligence on the Part of a University or College

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University Administration Is Exempt From Duty to Take Action If a Student Does Not Pose an Acute Suicide Risk

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In *Nguyen v. MIT*, 96 N.E.3d 128 (Mass. 2018), the Supreme Judicial Court of Massachusetts considered a university's duty to protect a student from self-harm. In 2011, the plaintiff alleged that the defendants' negligence caused his son's 2009 suicide. In March 2016, the defendants were granted summary judgment, and the plaintiff filed a cross-motion for summary judgment, which was denied. The Supreme Judicial Court of Massachusetts granted the plaintiff's motion for direct appellate review and concluded that summary judgment was properly granted on the tort claims and that the workers' compensation claim was properly denied.

Facts of the Case

Dzung Duy Nguyen, the father of Han Duy Nguyen, brought a wrongful death action against Massachusetts Institute of Technology (MIT), MIT professors Birger Wernerfelt and Drazen Prelec, and MIT assistant dean David W. Randall for the on-campus suicide of his son on June 2, 2009. Han Nguyen, 25, was a graduate student living off-campus.

Mr. Nguyen had a history of depression since high school and two suicide attempts in college. In 2007, Mr. Nguyen reported test-taking difficulties to the PhD program coordinator, Sharon Cayley,

who referred him to MIT's student disability services. The disability coordinator recommended test accommodations, but Mr. Nguyen declined to be identified as disabled. Ms. Cayley then referred him to MIT's mental health and counseling service, where he attended two sessions with a psychologist. He disclosed his history of suicide attempts, denied suicidal ideation, and reported seeing Dr. Worthington, a psychiatrist at Massachusetts General Hospital, thus rejecting MIT-based services.

Mr. Nguyen met with Mr. Randall in September 2007, and he disclosed the same information and again denied suicidal ideation. Mr. Randall "strongly encouraged" him to visit MIT's mental health services. The student said he was already seeing a psychologist, Dr. Bishop, but gave, and then revoked, permission to contact treatment providers.

Between July 2006 and May 2009, Mr. Nguyen was treated by nine mental health professionals with psychotherapy, pharmacotherapy, and electroconvulsive therapy. Over many suicide assessments, he was not considered imminently suicidal and was not overtly self-destructive.

On May 9, 2008, Professor Prelec learned that Mr. Nguyen was "out of it" and "despondent." Prelec met with him, reporting to Professor Wernerfelt that he was "sleep deprived." Aware of the student's exam anxiety, Wernerfelt recommended a less concentrated exam "to give him some confidence" (*Nguyen*, p 135). Mr. Nguyen tested poorly in January, but met with Prelec weekly during the spring of 2009, served as a teaching assistant that spring and fall 2009, and was offered a summer research assistant position in an MIT laboratory. On May 27, 2009, he sent an email to the project investigator (PI) expressing enthusiasm and indicating that he believed his budget to be unlimited, referring to MIT's "bottomless coffers." Wernerfelt read this message and suggested someone speak with Mr. Nguyen about sending more appropriate emails, offering to take the lead.

On June 2, 2009, Mr. Nguyen sent the PI a lengthy email, blind-copying Prelec, expressing that he felt insulted the PI had instructed him as he would an undergraduate. The PI reported to Prelec that the student had taken his comments out of context, misinterpreting his intentions, and Prelec forwarded the email to Wernerfelt. Two hours after sending his email, Nguyen arrived at a