

## Genuine Issues of Fact in Deliberate Indifference

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### The United States Court of Appeals for the Fourth Circuit Determines that Plaintiff Provided Sufficient Facts to Raise the Question of Deliberate Indifference by Prison Officials

In *Scinto v. Stansberry*, 841 F.3d 219 (4th Cir. 2016), the Fourth Circuit ruled that facts presented by the plaintiff (prisoner) precluded summary judgment for the defendants (prison officials) on the question of whether the plaintiff satisfied the objective and subjective prongs of *Farmer v. Brennan*, 511 U.S. 825 (1994), regarding his claims of prison staff members' deliberate indifference to his medical care. The court also ruled that expert testimony was not essential for the plaintiff to demonstrate that a prison doctor's refusal to provide insulin was an objectively serious deprivation giving rise to a claim of deliberate indifference.

#### Facts of the Case

Paul Scinto was incarcerated at Federal Prison Camp Butner in Butner, North Carolina. Dr. Derick Phillip was Mr. Scinto's physician at the prison and treated several of his medical conditions, including diabetes. On June 5, 2005, shortly after his arrival at Butner, Mr. Scinto was prescribed insulin injections in the morning and evening, as well as supplemental insulin injections based upon a "sliding scale."

On June 14, 2005, Mr. Scinto requested a supplemental insulin injection because his blood sugar was 200 mg/dL; he should have received four units of insulin. At the time of his request, Mr. Scinto admitted that he was "angry." Dr. Phillip terminated Mr. Scinto's visit and declined to provide him with insulin. Instead, Dr. Phillip developed an alternative plan to monitor at mealtimes his blood sugar and give short-acting insulin. Dr. Phillip asserted that the withholding of the insulin dose was justified by Mr. Scinto's threatening behavior and that his treatment

of Mr. Scinto's diabetes before and after this incident was appropriate.

Mr. Scinto claimed that Dr. Phillip's alleged repeated denials of supplemental insulin resulted in an increase in his hemoglobin A1C, which exacerbated his diabetes and resulted in damage to his kidneys, eyesight, nervous system, and psychological health.

On August 24, 2005, Mr. Scinto was locked in his housing unit while prison officials conducted a census count. During that time, water to Mr. Scinto's unit was shut off for maintenance. While locked down, he stated that he began experiencing abdominal pain, vomited blood, and became incontinent. He called the emergency line for help; he and prison staff disagreed on the intent of his use of the emergency line, and prison officials offered no assistance. Mr. Scinto claimed that Dr. Phillip simply "looked at him in disgust and turned his head and started to walk away" (*Scinto* p 231). According to the plaintiff, Administrator Susan McClintock also failed to provide any treatment or call for medical assistance, instead sending him to the Special Housing Unit, where he was confined for six months.

Mr. Scinto did not receive medical attention until two days after the August 24 incident. He attributed his emergency to acute cholelithiasis (gallstones), signs of which were first documented in his medical record on July 20, 2005.

On February 28, 2008, Mr. Scinto filed a *pro se* lawsuit against federal prison officials in the United States District Court for the District of Columbia. His original complaint sought relief for alleged violations of his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments, naming various federal officials as defendants. After dismissing several of these claims on jurisdictional and sovereign immunity grounds, the district court transferred his remaining claims to the United States District Court for the Eastern District of North Carolina. After a second appeal, he amended his complaint to include additional Eighth Amendment claims against defendants Dr. Phillip and Correctional Officer Lawrence Coor. On September 9, 2014, the district court granted summary judgment to the defendants on each of Mr. Scinto's claims.

Mr. Scinto appealed three of the claims dismissed on summary judgment, each based on alleged violations of the Eighth Amendment's prohibition against cruel and unusual punishment: (1) that Dr. Phillip

denied him insulin to treat his diabetes; (2) that Dr. Phillip and Administrator McClintock failed to provide aid in a medical emergency; and (3) that Warden Patricia Stansberry failed to provide a diabetic diet during Mr. Scinto's incarceration in the Special Housing Unit. He claimed that the prison officials' deliberate indifference to his medical needs violated the Eighth Amendment per *Estelle v. Gamble*, 429 U.S. 97 (1976) and *Farmer*.

#### *Ruling and Reasoning*

The United States Court of Appeals for the Fourth Circuit reversed the district court's disposition of the two Eighth Amendment claims against Dr. Phillip and Administrator McClintock, but affirmed as to the claim against Warden Stansberry. There were genuine points of fact that precluded summary judgment as to medical claims.

The court stated that prisoners alleging Eighth Amendment violations for deliberate indifference to their medical needs must satisfy the Supreme Court's two-prong test from *Farmer*: (1) that the deprivation of care was objectively sufficiently serious and (2) that the official(s) acted subjectively with a sufficiently culpable state of mind. Here, the court stated that Mr. Scinto provided sufficient evidence that he had a serious medical condition and that Dr. Phillip's failure to provide him with insulin could be interpreted as an extreme deprivation that resulted in significant physical or emotional injury. The court noted that Dr. Phillip admitted to refusing supplemental insulin, which alone might be sufficient to fulfill the objective prong. In addition, the court of appeals reasoned that Dr. Phillip's awareness of Mr. Scinto's medical condition and blood sugar level at the time of the refusal inferred an understanding that failure to provide insulin could result in a risk of serious harm. On these bases, the plaintiff raised genuine questions of material fact, thus precluding disposition of the issues on summary judgment.

The appeals court also disagreed with the lower court's reasoning in granting a summary judgment to defendants because the plaintiff did not provide expert testimony on the allegation that the missed insulin dose caused substantial harm to the patient's health. Citing the Federal Rules of Evidence, the appeals court noted that expert testimony is permissible when it helps the trier of fact understand a point, but not a requirement. Where laypersons are capable of understanding the facts and drawing logical conclu-

sions, expert testimony is not needed. The court found that a jury is capable of understanding, without expert testimony, the risks of failing to give insulin to a person with diabetes.

Regarding the refusal to provide a diabetic diet, the Fourth Circuit affirmed the district court's decision, reasoning that Mr. Scinto failed to raise a genuine dispute of material fact regarding whether the lack of a diabetic diet was a sufficiently serious deprivation.

#### *Discussion*

The central question of this case is the refusal of medical care in prison as cruel and unusual punishment. The facts of this case echo those in *Estelle v. Gamble*. In that case, Mr. Gamble injured his back while in prison. Despite seeing the prison doctor on multiple occasions, he argued that the failure to obtain an x-ray of his spine constituted deliberate indifference. The Supreme Court ruled that Mr. Gamble's claims did not constitute deliberate indifference, and that, while the failure to obtain the x-ray may have constituted malpractice, it did not constitute cruel and unusual punishment.

The deliberate-indifference standard established in *Estelle* was further explored in *Farmer*, where the Supreme Court formulated the subjective and objective prongs of deliberate indifference. In *Farmer*, a male-to-female preoperative transsexual was sentenced to federal prison, where she was raped and beaten by a male inmate. She filed a civil suit alleging an Eighth Amendment rights violation against prison officials for being deliberately indifferent to her safety. The Court decided that prison officials may be liable for deliberate indifference only if they were aware of a substantial risk of harm and they disregard this risk by failing to take steps to mitigate it, and that the appropriate test was subjective recklessness.

The Fourth Circuit holdings in this case serve as a reminder to clinicians in correctional settings that, from a nonmedical perspective, any withholding of medical treatment may be interpreted as deliberate indifference. Most physicians would consider the significance of a single missed four-unit dose of insulin to be inconsequential, but the court did not interpret it as such, at least at the summary judgment stage. Although the quality of medical documentation in this case is unknown, one wonders if additional detailed documentation (for example, specifically indi-

cating that the plaintiff was agitated to the point of creating an unsafe environment for the delivery of an insulin injection, or documentation from the physician that a missed dose of insulin would not be expected to have an appreciable effect on his long-term diabetes control) would have made a difference in the Fourth Circuit's opinion. Clinicians in correctional settings are advised to pay special attention to documenting situations where medical care is withheld, both to protect themselves from accusations of deliberate indifference and to be mindful of providing proper medical treatment to inmates.

Disclosures of financial or other potential conflicts of interest: None.

## Municipalities May be Held Liable for Warrantless Removal of Child

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### Ninth Circuit Rules That Warrantless Removal of a Child Is Constitutional Only in the Most Exigent of Circumstances

In *Kirkpatrick v. County of Washoe*, 843 F.3d 784 (9th Cir. 2016), an infant, B.W., was removed from her mother's care two days after her birth. Under 42 U.S.C. § 1983 (1996), the father, Jamie Kirkpatrick, sued the social workers involved and the County of Washoe, Nevada, for damages, claiming that they violated his Fourth and Fourteenth Amendment rights in removing the child from her parent without a warrant. The district court awarded summary judgment to the defendants, in part because of improper filing by Mr. Kirkpatrick and his not having established his paternity at the time of the removal. The Ninth Circuit Court of Appeals ruled that B.W.'s constitutional rights, in addition to Mr. Kirkpatrick's, should be considered. However, although the social workers had violated B.W.'s constitutional rights, they had qualified immunity because of a lack of legal guidance that would have made them aware of their constitutional violations. The court reversed the summary judgment for the County of Washoe.

There was inadequate evidence to indicate that the county should have had a policy regarding obtaining warrants, and there was not a direct link between the lack of a policy and the violation of B.W.'s constitutional rights.

#### Facts of the Case

B.W., a female, was born on July 15, 2008, in Reno, Nevada. At birth, she tested positive for methamphetamine. Her mother, Rachel Whitworth, admitted to smoking methamphetamine throughout her pregnancy. The father, Jamie Kirkpatrick, was present for the birth, but his paternity had not been established. It was later proved that he was B.W.'s father.

Ms. Whitworth informed the hospital staff that she had had two other children removed from her care. The hospital obtained information that her other two children were in foster care and that the Washoe County Department of Social Services (DSS) was pursuing termination of parental rights because Ms. Whitworth had not followed through with the case plan. Specifically, she had failed to obtain housing for her children and had not demonstrated an ability to care for them. In the hospital, Ms. Whitworth failed to change and feed B.W. appropriately, prompting the social worker to recommend that the hospital place a hold on the infant.

On July 17, 2008, B.W. was discharged into DSS custody and placed in foster care with her siblings. The next day a protective custody hearing was held by the Nevada Second Judicial District Court, where reasonable cause was established to retain B.W. in protective custody. A petition was subsequently filed by DSS on July 28, 2008, alleging that B.W. required protection. Ms. Whitworth had not retained an attorney, made no further contact with DSS, and was unable to be located for future hearings.

Mr. Kirkpatrick did not attend the protective custody hearing on July 18, 2008. The court completed a paternity test, at his request, and his paternity was established. In January 2009, he expressed interest in having B.W. placed with him and ultimately obtained custody on December 31, 2009. Before that placement, in October 2009, Mr. Kirkpatrick filed the original suit against Washoe County and the three DSS social workers involved in the case.