

18-7919

Supreme Court, U.S.

FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2018

No. 17-3025

SUSAN GRUND

Petitioner

-against-

Corizon,

Dr. Richard Hinchman,

Julie Murphy

Respondents

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

ORIGINAL

SUSAN GRUND *pro se*
Madison Correctional Facility
800 MSH Bus Stop Drive
Madison, IN 47250

POSTMARKED ON:

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GREGORY R. PACHMAYR
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QUESTIONS PRESENTED

1. Whether The District Court in granting summary judgment improperly decided disputed factual issues which the appeal court affirmed.
2. Whether the Petitioner's factual allegations of deliberate indifference to a serious medical need raised a material issue under the Eighth Amendment.

PARTIES

The petitioner is Susan Grund, a prisoner at Madison Correctional Unit in Madison, Indiana in Jefferson County. The respondents are Corizon, Dr. Richard Hinchman, and Julie Murphy.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is unreported and a copy is attached as Appendix A to this petition. The order of the United States District Court for the Southern District of Indiana in not reported. A copy is attached as Appendix B to this petition.

JURISDICITION

The judgement of the Seventh Circuit Court of Appeals was entered June 7, 2018 affirming the District Court's decision to grant Summary Judgement to the Defendants. Jurisdiction is conferred by 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution. The Amendment is enforced by Title 42, Section 1983, United States Code.

STATEMENT OF THE CASE

Susan Grund, who is incarcerated in Indiana, suffers from breast pain related to silicone breast implants. Ms. Grund sued Corizon Healthcare Services (the prison's healthcare provider), Dr. Richard Hinchman, and Julie Murphy both employed by Corizon, alleging that they had been deliberately indifferent to her serious medical need and pain she suffered in violation of the Eighth Amendment.

Ms. Grund had silicone breast implants prior to her incarceration, 1994. In 2002 she began complaining of breast pain when Dr. Hinchman proved incapable of addressing her pain Ms. Grund engaged an attorney to negotiate with the Healthcare provider. After protracted litigation, Ms. Grund was sent to a plastic surgeon who diagnosed her with capsular contracture that resulted in ruptured silicone implants, removed and replaced the

implants in 2010.

Ms. Grund began experiencing breast pain again in 2012. In 2013 she saw Dr. Hinchman, the prison gynecologist, and complained of breast discomfort and a tightening sensation. Dr. Hinchman only performed a physical examination and ordered her a mammogram which noted no abnormalities.

Ms. Grund returned to Dr. Hinchman after his ordered mammogram complaining that her breasts were now “painful”. Dr. Hinchman again only physically examined Ms. Grund and asked if she could shower by herself. Ms. Grund reported that the pain in both her breast kept her from exercising, the majority of prison work, sleeping, and living a productive, quality life. Dr. Hinchman rendered no medical treatment to Ms. Grund and concluded the visit leaving Ms. Grund in pain.

In addition to these examinations Dr. Hinchman’s colleague ordered blood tests in 2015 that indicated high levels of antinuclear antibodies (“ANAs”), which Ms. Grund asserts demonstrates that her body was rejecting a foreign substance like silicone. Dr. Hinchman responded that Ms. Grund has celiac disease.

Ms. Grund complained that Julie Murphy interfered with her medical care requiring her to report to her before or after every doctor’s appointment. Murphy stated she merely responded to Grund’s complaints by forwarding them to the prison doctor.

In January 2016 Ms. Grund sued Dr. Hinchman, Nurse Murphy, and Corizon under 42 U.S.C. § 1983 alleging inadequate treatment of pain associated with her breast implants. She asked the District judge to recruit her counsel to assist her. The judge granted Grund’s motion but found no counsel. Grund later renewed her motion, but the judge denied it, saying Grund was competent to litigate her case and there were not “enough lawyers willing and qualified to accept a pro bono assignment in every pro se case.”

The defendants moved for summary judgment, supported by affidavits from Dr. Hinchman, Nurse Murphy, and an outside medical expert. Grund responded submitting (among other things) her own affidavits in support. The judge granted the motion based in part on the statute of limitations and also because Grund lacked evidentiary support for her claim. The judge held that Grund’s claim was untimely to the extent that it rested on Dr. Hinchman’s conduct occurring before January 2014. On the merits the judge held that the evidentiary record

did not show that Dr. Hinchman was deliberately indifferent to Grund's medical needs or that Nurse Murphy was responsible for (or even made) any treatment decisions. Finally, the judge found no basis for holding Corizon liable under § 1983. The appeal court stated, "taking the timeline question first, we note that Dr. Hinchman's conduct before January 2014 would drop out of the case only if Grund's suit rests on discrete episodes of alleging deliberate indifference. But Grund's claim is alleging ongoing allegations the statute of limitations for the Eighth Amendment claim runs "from the date of the last incident of that violation, not the first. A violation is continuing "where it would be unreasonable to require or even permit a prisoner to sue separately over every incident of the defendants' unlawful conduct."

The appeal court noted that "Grund disagrees with Dr. Hinchman about the cause of her breast pain and the significance of her positive ANAs screen cannot establish deliberate indifference. She has no right to her preferred course of treatment. However, Ms. Grund submitted to the appeal court the fact that once IDOC replaced Corizon as the healthcare provider with Wexford, and Dr. Dew replaced Dr. Hinchman, Ms. Grund was sent to her former plastic surgeon, diagnosed again with capsular contracture, had surgery in January 2018 to remove her compromised silicone implants and her blood test revealed her ANAs were now normal and she does not have celiac disease. All of Dr. Hinchman's diagnoses were incorrect for the second time in his medical career with the same patient, Ms. Grund. Ms. Grund's evidence demonstrates that Dr. Hinchman was deliberately indifferent to Grund's serious medical need and all of his diagnoses were incorrect.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Eighth Amendment to the United States Constitution which prohibits the "unnecessary and wanton infliction of pain". The District Court had jurisdiction under the federal question jurisdiction.

REASONS FOR GRANTING THE WRIT

A. Conflict with Decisions of Other Courts

The holding of the courts below that "disputed facts or access credibility on Summary Judgement will not be decided upon. Thus, a Court should not grant Summary Judgment because it thinks assertions about an

incident or injury is inconsistent with prison medical records or medical statements. *Scott v. Coughlin*, 344 F.3d 282, 289-90 (2nd Cir. 2003). Summary judgment is to be granted only if the record before the Court shows “that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law. Rule 56 (c) Fed.R.Civ.P. “The District Court may not make credibility determinations or otherwise resolve disputed factual issues on a motion for Summary Judgment.” *Jenkins v. Winter*, 540 F.3d 742, 750 (8th Cir. 2008); *Washington v. Haupert*, 481 F.3d 543, 550 (7th Cir. 2007). The defendants stated they, “do not argue that Grund’s asserted condition is not a serious medical condition, rather they assert they were not deliberately indifferent” and both the District and Appeal Court both stated that Dr. Hinchman’s examination and conclusion of his “objective findings” seemed reasonable care yet Grund continued to suffer and eventually was correctly diagnosed and had surgery to remove her compromised silicone implants. Thus the courts made credibility determination to resolve a disputed factual issue on a motion for Summary Judgment.

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of this Court’s decision in *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285 (1976). The question presented is of great importance to the incarcerated population and public importance of the operation of medical care provided to all incarcerated persons in the United States. In view of the large amounts of litigation over deliberate indifference to a serious medical need, continual guidance on the question is also of great importance to prisoners, because it affects their ability to receive adequate medical care that may affect their quality of life and pain and suffering while incarcerated and after incarceration. The vast number of incarcerated women who have breast implants, especially silicone breast implants and have complications while incarcerated grows daily. Silicone breast implants are more serious when complications arise than breasts without silicone implants or with saline implants, especially for a doctor who is not qualified with silicone implants. Prison healthcare providers are more concerned with costs and count on prisoners not knowing how to litigate, or litigating improperly, to receive proper medical care, than giving proper medical care.

In *Mata v. Saiz*, 427 F.3d 745, 753 (10th Cir. 2005) the court held that the seriousness of a medical need

is not determined exclusively on the symptoms presented when the prisoner comes in contact with a prison employee, but on the “alleged harm to the prisoner”. In Ms. Grund’s case she was well known to Dr. Hinchman as she had suffered the same serious medical condition previously under his care. Ms. Grund suffered from capsular contracture until her implants ruptured in 2002 and was experiencing capsular contracture again in 2014. Grund’s incarcerated life was diminished inasmuch as she was restricted by Dr. Hinchman’s colleagues in her work assignments and duties, and her quality of life was diminished due to her pain. Dr. Hinchman knew of Ms. Grund’s medical past, contributed to her past pain and suffering and repeated his deliberate indifference to her serious medical need again in this case. Prisoners are in the custody of the state and are unable to seek medical assistance on their own, the state is under a duty to provide adequate treatment. *Estelle v. Gamble*, 429 U.S. 97, 97 Ct. 285, 50 L.Ed 2d 251. The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency.” 429 U.S. at 103, 97 S. at 290 (citations omitted) (1976).

“Absence of “objective” evidence of pain and suffering did not excuse a refusal to treat it since “self-reporting” is often the only indicator a doctor has of a patient’s condition.” *Greene v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005). The Third Circuit Court stated, “Prisoners generally cannot get independent medical evidence and their sworn statements are the best evidence available to them.” *Brooks v. Kyler*, 204 F.3d 102, 107-08 and n.4 (3d Cir. 2000).

In the District Court and Appeal Court Ms. Grund did not have all the evidence she has now since her breasts were properly diagnosed, received proper medical care with surgery, retested and properly diagnosed with all other improperly diagnosed medical conditions. Ms. Grund has all the evidence to clearly demonstrate to a jury that Dr. Hinchman was deliberately indifferent to her serious medical need when he refused to render her any medical treatment for her pain and suffering. Ms. Grund asked for a jury trial because as the facts will clearly show she was suffering in pain from the exact same serious medical condition Dr. Hinchman previously let her suffer from until her implants ruptured themselves; capsular contracture. She has her surgeon’s statement and notes from her surgery. In addition Ms. Grund has her blood tests results that clearly show she does not suffer from celiac disease and her ANA level is now normal since her compromised silicone breast implants

have been removed. Although Dr. Hinchman no longer practices medicine the healthcare providers of prisons across America still provide other Dr. Hinchman's that will engage in deliberate indifference to serious medical need of women who may have silicone breast implants.

A jury could reasonably conclude that Dr. Hinchman did not provide adequate medical care; he provided no medical care twice and retired.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully submitted this 16th day of July 2018



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CERTIFICATE OF SERVICE

I do hereby affirm that a copy was sent to Carol Dillon 8470 Allison Pointe Blvd., Suite 420, Indianapolis, IN. 46250-4365 on this 16th day of July 2018.



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