20-7830

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

No: 19-2794

FIRAS M. AYOUBI
Petitioner,

-Versus-

WEXFORD HEALTH SOURCES INC.,
STEPHEN RITZ,
ALBERTO BUTALID,
PERCY MYERS,
ALISA DEARMOND,
SCOTT THOMPSON, and,
CHRISTINE BROWN
Respondent's.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Firas Ayoubi #R66956
Dixon C.C.
2600 N Brinton Ave.
Dixon, IL, 61021
Petitioner

QUESTIONS PRESENTED FOR REVIEW

1: Did the Seventh Circuit's decision put an unreasonable requirement and hieghtened burden of proof in establishing likelihood on the merits at the preliminary injunction stage?

2: Did the Seventh Circuit properly apply Supreme Court Precedent to consider circumstantial evidence in the context of the deliberate indifference standard as set forth by this court in Farmer v. Brennan?

3: Did the Seventh Circuit properly apply the "obvious risk" Canton analysis in determining the likelihood on the merits for the Monell claim?

TABLE OF CONTENTS

Questions Presented For Review..... i

Table Of Contents..... ii

Table Of Authorities..... iii

Citations Of The Official And Unofficial Reports Of Opinions And Orders Entered In The Case..... iii

Statement Of The Basis For Jurisdiction..... iv

Constitutional, Statutory Provisions Or Treaties Involved..... iv

Statement Of The Case..... 1

Reasons For Granting The Writ..... 10

I: THE SEVENTH CIRCUIT ERRED IN AFFIRMING THE DENIAL OF A MOTION FOR PRELIMINARY INJUNCTION 14

A: SEVENTH CIRCUIT'S HOLDING IS IN CONFLICT WITH PRIOR SUPREME COURT AND SEVENTH CIRCUIT DECISIONS IN DETERMINING THAT PLAINTIFF DID NOT ESTABLISH THE LIKELIHOOD ON THE MERITS

B: SEVENTH CIRCUIT DID NOT PROPERLY CONSIDER CIRCUMSTANTIAL EVIDENCE AS ADVISED BY THE SUPREME COURT IN FARMER V. BRENNAN

C: PRISONER-PLAINTIFF NEED NOT DEMONSTRATE A CULPABLE MENTAL STATE IN ESTABLISHING A LIKELIHOOD ON THE MERITS FOR THE MONELL CLAIM AS ARTICULATED BY THE SUPREME COURT IN CANTON V. HARRIS

Conclusion..... 29

Appendix.....

TABLE OF AUTHORITIES

SEVENTH CIRCUIT'S HOLDING IS IN CONFLICT WITH PRIOR SUPREME COURT AND SEVENTH CIRCUIT DECISIONS IN DETERMINING THAT PLAINTIFF DID NOT ESTABLISH THE LIKLIHOOD OF SUCCESS ON THE MERITS

Cases

Louisiana Ex Rel Francis vs. Resweber 329 U.S. 459,463,67 S.Ct. 374,376,91 L.Ed 422 (1947).....14

Estelle vs. Gamble 429 U.S. 97, 97 S.Ct. 286 (1976).....14,15

Gregg vs. Georgia 428 U.S. 153,178,96 S.Ct. 2909,2925, L.Ed. 2d 859 (1976).....15

Hudson vs. Palmer 468 U.S. 517,526-527,104 S.Ct. 3194,3200, L.Ed.2d 393 (1984).....15

Washington vs. Harper 494 U.S. 210,255, 110 S.Ct. 1028,1038-39, 108 L.Ed.2d 178 (1990).....16

Wilson vs. Seiter 501 U.S. 294,302,111 S.Ct. 2321,115 L.Ed.2d 259 (1991).....16

Helling vs. McKinney 509 U.S. 25,31-32, 113 S.Ct. 2425,2840, (1993).....15,16

Farmer vs. Brennan 511 U.S. 825, 128 L.Ed.2d. 811(1994).....11,16||17

Greeno vs. Daley 414 F.3d 655 (7th Cir.2005).....20

Hayes vs. Snyder 546 F.3d 516 (7th Cir.2008).....13,17

McGill vs. Duckworth 944 F.2d. 344,348 (7th Cir. 1991).....19

Gil vs. Reed 381 F.3d. 649 (7th Cir. 2004).....19

Plyes vs. Fahim 771 F.3d 403,412 (7th Cir. 2014).....19

Wheeler vs. Wexford Health Sources 689 F.3d 680,682 (7th Cir. 2012).....19

Hoban vs. Wexford Health Sources 731 Fed.Appx 5030 (7th Cir. 2018).....14,20

Withers vs. Wexford Health Sources 710 F.3d. 688,689 (7th Cir. 2013).....19

Ayoubi vs. Dart 729 Fed.Appx 455,499 (7th Cir.2018).....19

Valencia vs. City of Springfield Illinois 883 F.3d. 959,966, (7th Cir.2018).....18

Cesal vs. Moats 851 F.3d. 714,723 (7th Cir.2017).....13,18

Bentz vs. Ghosh 718 Fed.Appx 413 (7th Cir.2017).....14,19

Cooper vs. Casey 87 F.3d. 914 (7th Cir.1996).....13,19

Antonelli vs. Sheahan 81 F.3d 1422 (7th Cir.1996).....19

Murphy vs. Walker 51 F.3d. 714 (7th Cir. 1995).....19

Rivera vs. Gupta 836 F.3d. 839,841-42 (7th Cir.2016).....19

Edwards vs. Snyder 478 F.3d. 827,830-31 (7th Cir.2007).....7,19

Rodriguez vs. Plymouth Ambulance Serv. 577 F.3d. 816,830 (7th Cir.2009).....19

Barry vs. Peterman 604 F.3d 435,440 (7th Cir.2010).....19

Cooper vs. Salazar 196 F.3d.809,813 (7th Cir.1999).....19

Boyd vs. Knox 47 F.3d. 966 (8th Cir.1995).....19

Boretti vs. Wiscomb 930 F.2d 1150 (6th Cir.1991).....19

Fields vs. Gander 734 F.2d. 1313 (8th Cir.1984).....19

Brown vs. Hughes 894 F.2d. 1505,1538 (11th Cir.1990).....19

Hunt vs. Dental Dep't 865 F.2d. 198,201 (9th Cir.1989).....19

Loe vs. Armstead 582 F.2d. 1291 (4th Cir.1978).....19

Constitutional and Statutory Provisions

Title 42 United States Code, Section 1983

United States Constitution Amendment 8

Rules

Rule 65, Federal Rules of Civil Procedure

Treatesies and References

LaFave & Scott §3.7 p.335

Mayoclinic

MerkManuals

SEVENTH CIRCUIT DID NOT PROPERLY CONSIDER CIRCUMSTANTIAL EVIDENCE AS ADVISED BY THE SUPREME COURT IN FARMER VS. BRENNAN

Cases

Farmer vs. Brennan 511 U.S. 825, 128 L.Ed.2d 811 (1994).....24,25,27

Helling vs. McKinney 509 U.S. 25,31-32,113 S.Ct.2425 (1993).....21,24

Wilson vs. Seiter 501 U.S. 294,302-303,111 S.Ct.2321,115 L.Ed.2d 279 (1991).....16

Hutto vs. Finney 437 U.S. 685-688, 98 S.Ct 2570-72 ( ).....19

United States vs. Oregon State Medical Soc. 343 U.S. 326,333 72 S.Ct. 690,695, 96 L.Ed. 978 (1952).....19,20

Valencia vs. City of Springfield Illinois 883 F.3d.959,966 (7th Cir.2018).....25

Hayes vs. Snyder 546 F.3d. 516 (7th Cir.).....25

Hoban vs. Wexford Health Sources 731 Fed.Appx.5030 (7th Cir. 2018).....20

Maltby vs. Chicago Great Western Ry.Co. 347 Ill.App 441 (1952)..26

Constitutional and Statutory Provisions

United States Constitution, Amendment 8

United States Constitution, Amendment 14

Title 42, United States Code, Section 1983

Rules

Rule 65, Federal Rules of Civil Procedure

Rule 801, Federal Rules of Evidence

Rule 609, Federal Rules of Evidence

Rule 608, Federal Rules of Evidence

Rule 404, Federal Rules of Evidence

Treatesies and References

Model Penal Code § 202(2)(c)

31 C.J.S., Evidence §272 p.1023

Jones, Commentaries on the Law of Evidence Vol 2 §235 p.349

Jones, Commentaries on the Law of Evidence Vol 2 §236 p.362

Am.Jur.Evidence § 545 p.461

PRISONER-PLAINTIFF NEED NOT DEMONSTRATE A CULPABLE MENTAL STATE IN ESTABLISHING A LIKLIHOOD ON THE MERITS FOR THE MONELL CLAIM AS ARTICULATED BY THE SUPREME COURT IN CANTON VS. HARRIS

Estelle vs. Gamble 429 U.S. 97, 97 S.Ct.286 (1976).....14,15

Farmer vs. Brennan 511 U.S. 825, 128 L.Ed.2d. 811 (1994).....25,27

Canton vs. Harris 489 U.S. 378, 109 S.Ct.1197,103 L.Ed.2d 1112 (1989).....26-28

St.Louis vs. Proprotnik 485 U.S. 112,127,108 S.Ct.915 (1988)....27

West vs. Atkins 487 U.S. 42, 54-57, 108 S.Ct 2250 (1988).....28

Correctional Services Corp vs. Malesko 534 U.S. 61,71,122 S.Ct. 515 (2001).....28

Board of County Comm'rs vs. Brown 520 U.S. 397,404,117 S.Ct. 1382 (1997).....26

Monell vs. New York City Dep't of Social Services 436 U.S. 112, 127, [illegible]

Davis vs. Carter 452 F.3d. 686,691-94 (7th Cir.2006).....29

Gibson vs. County of Washoe, Nev. 290 F.3d.1175,1190-91 (9th Cir.2002).....29

Colle vs. Brazoz County, Tex 981 F.2d. 237,245 (5th Cir.1993)....29

Anacaba vs. Prison Health Services Inc., 769 F.2d. 700, 705-706 (11th Cir.1985).....29

Howell vs. Evans 922 F.2d. 712,723-24 (11th Cir.1991).....29

Mitchell vs. Aluisi 872 F.2d. 577,580 (4th Cir.1989).....28

Lawson vs. Dallas County 286 F.3d 257,264 (5th Cir.2002).....28

Garretson vs. City of Madison Heights 407 F.3d. 789 (6th Cir.2005).....28

Constitutional and Statutory Provisions

United States Constitution, Amendment 8

Title 42, United States Code, Section 1983

Rules

Rule 65, Federal Rules of Civil Procedure

Treaties and References

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE

The judgment of the United States Court of Appeals for the Seventh Circuit is unreported. It is cited in the appendix as " Appx A", the per curiam decision, No: 19-2794 bears a docket number of #46 in the Seventh Circuit's general docket. A copy is attatched in the appendix. The order of the United States District Court Southern District of Illinois denying a motion for preliminary injunction is also unreported. It is identified in the Southern districts general docket as Document #99 (Report and Reccommendation) and Document #108 (Adoption of Report and Reccommendation). Copies are attatched as appendix B & C to this petition.

STATEMENT OF THE BASIS FOR JURISDICTION

The per curiam opinion and judgment of the United States Court of Appeals Seventh Circuit was entered on Sept 3, 2020 (19-2794 Doc # 46 & 47). And order denying a petition for rehearing was entered on Oct 5, 2020 (19-2794 Doc #49). Copies of these orders are attatched to this petition as Appendix #'s A-C. The District Court had original, subject matter federal question jurisdiction pursuant to 42 U.S.C. §§ 1331(a) and §§1343. The U.S. Court of Appeals also had appellate jurisdiction of this interlocutory appeal pursuant to 28 U.S.C. §1292(a)(1). Thus jurisdiction is conferred by 28 U.S.C. 1254 (1) to this Honorable Court. And therefore, is timely filed pursuant to 28 U.S.C. §2101 (c)and S.Ct.Rule 13.1 and Rule 36(a) Federal Rules of APpellate Procedure.

This case raises questions of interpretation of title 42 of the United States Code, Section 1983 and the 8th Amendment to the United States Constitution. It also raises questions of interpretation of the deliberate indifference standard as it relates to the context of equittable relief in the form of a preliminary injunction as perscribed in Rule 65 of the Federal Rules of Civil Procedure. The District Court had jurisdiction under federal question jurisdiction conferred by 28 U.S.C. §1331. Appeals Court had interlocutory jurisdiction under 28 U.S.C. §1292 (a)(1).

CONSTITUTIONAL,STATUTORY PROVISIONS OR TREATIES INVOLVED

United Staes Constitution, Amendment 8
United States Constitution, Amendment 14
Title 42, United States Code, Section 1983
Title 28, United Staes Code, Section 1292(a)(1)
Title 28, United States Code, Section 1294(1)

STATEMENT OF THE CASE

Firas Ayoubi, an Illinois State Prisoner, brought this civil right's complaint under 42 U.S.C § 1983 against Illinois Prison Officials (Warden Scott Thompson, Healthcare Administrator Ms. Christine Brown), Wexford Health Sources Inc., who is contracted to administer healthcare at Illinois prisons, Dr. Stephen Ritz who is Wexford's corporate director of utilization management and medical doctors/practioner's at the prison, Dr. Percy Myers, Alberto Butalid and practioner Alisa Dearmond. He claimed the defendants' displayed deliberate indifference to his serious medical need: an neurological movement disorder of unknown origin. He claimed they (1) refused to send him to a neurologist to obtain diagnosis and treatment (2) delaying and denying treatment to address on-going pain and difficulty functioning (3) denying him specialized housing to prevent injury (bottom bunk housing to prevent falls and single cell housing to prevent assault) (4) that Wexford maintained cost-cutting policies and customs, the moving force behind the doctors' deliberate indifference and thus, a deliberately indifferent policy.

Plaintiff-Petitioner suffers from a progressive neurological movement disorder of unknown origin. It began subtle, with involuntary movements in his right shoulder about 4 years ago during his pretrial detention at Cook County Jail in Chicago, Illinois. As time went on, this progressed. Eventually causing constant twisting and jerking of his extremeties which included his arm, shoulder, torso, neck and at times, his legs. It causes "extreme pain" when he winds up pulling a muscle from not being able to control it. At times, it causes him to elbow other people around him, including cellmates.

During his stay at the Pinckneyville Correctional Center, he claimed that doctors declined to treat his pain. That despite his verbal complaints of pain and difficulty functioning, the only eventual pain perscription was several months later. Which was limited and low grade over the counter ibuprophen. He claimed that this perscription was made after the doctors were served with the lawsuit. That doctors approached his reported symptoms with a casual, dismissive attitude. Referring him to mental health on different occasions. Placing him for 3 days to be "monitored" in the infirmary, not for treatment but to justify denying him. And although mental health professionals opined a "neurological'and "involuntary" issue, and mixed observations by nurses in the infirmary some noting movements and some not, repeatedly denied plaintiff. That they denied plaintiff despite persistence and worsening of the condition and their admitted knowledge that these conditions can appear inconsistent at times and are difficult to diagnose. Plaintiff also requested a renewal of a previously perscribed low bunk permit only to be denied by defendants. Plaintiff brought his claims under the premise that Wexfords cost-cutting, deeply embedded practices was the driving force behind the individual defendants' deliberately indifferent acts or omissions.

He requested a preliminary injunction. Seeking a consultation with a neurologist to obtain diagnosis and treatment. Likewise, he requested defendants be enjoined to provide him "treatment for the pain" and "specialized" housing to prevent injury. The court held an evidentiary hearing. Dr. Myers, among other defendants testified concerning their knowledge or plaintiffs complained-of symptoms, his condition and their medical knowledge, skills, training and experience concerning these rare types of

conditions. They were also questioned regarging their notes, in the medical records which evidenced their observations and their medical conclusions at those particular occasions.

Defendants gave inconsistent accounts about whether they observed that plaintiffs symptoms/movements appeared "involuntary" and whether plaintiff reported to them that he was in pain. They were presented with these prior statements in the medical records which noted observations of "involuntary" movements and that they were 'associated with pain' (Appx E). One doctor had expressed "I am not sure why I inserted that portion, that little part in that collegial" (R 68) insisting that plaintiff never complained about pain. But then two of these doctors later admitted to having knowledge of the pain "Q: Okay. What about whether or not it was painful? did I tell you it was painful? A: I think there was mention of that from the nurse note Q: okay so you were aware that it was causing me pain? A: there was a mention from the nurse note yeah" (R11,12,15,45,67), "A: I saw that your pain was not main problem at the time" (R11-12), "A: well I dont think pain was the issue here. The issue was your movement and you were placed in the infirmary to determine if these movements were voluntary or involuntary" (R 45,67) but yet these doctors admitted that the movements were the source of the pain (R15-16). They similarly admitted these conditions are difficult to diagnose and can appear inconsistent at times (R42-43).

In response, Dr. Ritz continued to deny these requested neurology consult requests made by doctors and also imaging scan requests. He denied these on the same premise, that plaintiff had

not presented "evidence" of his symptoms, and the movements have "not been directly observed" even though the record was riddled with observations from various nurses, doctors and mental health professionals.

Plaintiff submitted a sworn affidavit in lieu of testifying. In this affidavit he expressed in detail his experiences with this condition (C97). He expressed in detail his experiences with these defendants and his time spent in the infirmary. And how this condition was painful and affects his living. That it was "extremely painful" and still is. That it makes things time consuming such as "putting on a shirt...eating..even pouring a cup of coffee" (C 97). He explained how he has to place a chair near his bunk so he can use it to place his foot on when he needs to come down. That he fell as a result of "twisting" on an occasion, severely injuring himself. This was corroborated by the record (Appx F).

The conditions which are associated with "Chorea" or Choieform movements are (but not limited to) Parkinsons, Huntingtons Disease, Tardive Dyskenisia, Tardive Dystonia, Torsion or Idiopathic Dystonia among others.

The magistrate issued a report and reccommendation, denying the injunction. In part, because Dr. Myers testified to seeing plaintiff outside in a courtyard with "no gait issues" or movement issues. Even though Dr. Myers could not even testify how a person with these types of issues would walk (R56) and even more critically, that he made this entry, after he was served with a lawsuit. Which he denied, even though it was clearly established:"Q: Okay that one time in the chart that you notated it, this was after you were served summons in this case? isnt that correct? A: No" (R56). But the waiver of summons and the notation clearly states otherwise (C9). Nevertheless, the judge denied the injunction and credited defendant doctors. He also noted his own observation of the Plaintiff

"at a lengthy hearing" and the plaintiff didnt appear to be experiencing the type of pain he described. (Appx B). The magistrate ruled that despite that "Ayoubi argues that he will suffer irreperable harm as the involuntary movements cause him pain" that "the undersigned notes that Ayoubis symptoms have persisted for nearly two and a half years while he has been incarcerated and he has not provided evidence that his symptoms have escalated or that his health has deteriorated" (Appx B) The judge cited that the defendants "treated Ayoubi based on their objective findings after evaluating him" (Appx B) that the "record reveals that Ayoubi's symptoms did not support a diagnosis of a neurological issue, was referred to mental health and performed tests" (Appx B). The judge did not consider the report of plaintiffs retained expert, Dr. Norman V. Kohn, an expert in neurology and neuropsychiatry. (Appx D) Who opined otherwise. The judge finally stated that he would have 'no problem" enjoining IDOC to allow plaintiffs own, hired neurologist to evaluate him at the prison (Appx B) This judge did not address the other aspects of plaintiffs motion for preliminary injunction. Namely, the request for pain medication due to the on-going harm of not being treated for the pain, and the requests for specialized housing. Particularly, bottom bunk to prevent falls, and single cell housing to prevent assault (due to him elbowing cellmates in a small cell). The plaintiff reasoned on appeal that the judge was especially erroneous to his decision because he was presented with bonafied evidence that he was injured coming down from his bunk.

The plaintiff filed an interlocutory appeal invoking the "imminent danger" exception to the PLRA. Judge Rosenstengel granted the request and certified the appeal was taken in good faith. The Seventh Circuit briefing argued these issues. That the District

Court erred in finding that the condition was not serious, that it erred in making credibility determinations and drawing inferences in the evidence in favor of the defendants, and that the plaintiff presented sufficient evidence for the issuance of a preliminary injunction. (Appellant Br. Doc #AC23) The defendants responded that the plaintiff was mistaken on the standard of review for denial of a preliminary injunction, that the standard plaintiff relied on was the summary judgment standard, they reasoned that the preliminary injunction phase, the judge is premitted to make credibility determinations and the burden of proof lies on the plaintiff (Appellees Br. Doc#AC33). The plaintiff responded that even if the district court could make credibility determinations and that the burden of proof resten on him, then the judges determination was still "against the manifest wieght of the evidence" (Appellant Reply Br. Doc # AC38). The plaintiff cited evidence in the record, in particular, inconsistent and impeaching testimony of the Doctor defendants, medical note enteries by defendants which showed that they had knowledge of the involuntary movements and pain and failed to alleviate it (AC38). He similarly cited Dr. Norman Kohns assessments of the record and the defendants medical decisionmaking (AC23-38). The seventh Circuit affirmed. It affirmed on the basis that plaintiff failed to show a liklihood of success on the merits (CA7 Op. Doc#AC46). The seventh circuit acknowledged that the district judge ruled that plaintiff could not establish "a reasonable likelihood of success on the merits (because he had not shown that his treatment plan departed significantly from professional standards) (CA7 Op. pp.3 Doc#AC46. The seventh circuit reasoned that despite plaintiff's argument "that the cumulative medical record compels the conclusion that the refusal of his request for an outside specialist could have been made only with malice...." that "the record does not support this contention.As the district court determined, no factfinder

could conclude the defendants deliberately ignored or seriously aggravated Ayoubi's condition. The record reflects that, in response to his complaints of pain, the defendants placed him under close observation for several days in the infirmary where he was given laboratory tests and perscribed motrin for pain relief" (CA 7 Op. at pp.3 Doc# AC46). They held that Ayoubi had not "countered this by pointing to anything in the record to suggest that his care was 'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate a medical condition"' citing Edwards vs. Snyder, 478 F.3d.827,831 (CA7 2007).

Plaintiff responded with a Petition for Rehearing (Appx Doc #AC48).He responded that it wasn't only the "cumulative medical record" that established likelihood on the merits, but the doctors own testimony, which evidenced conflicting and contradictory statements, the report of Dr. Kohn which established the actual standard of care, which Dr. Kohn explained that the Defendants, Myers and Ritz deviated from. And similarly, new medical record entries which showed injury as a result of falling, and a overiding of defendants most recent denial in June 2020 by the State Medical Director, Dr. Conway, who is not an employee of Wexford (Appx F). That this evidence certainly can be presented to a jury. That tends to show that doctors had subjective awareness of plaintiffs involuntary movements and pain, in the medical notes, and failed to alleviate it for several months (Appx E). That this delay in treating painful condition, could consitiute evidence of deliberate indifference that can be presented to a jury. Plaintiff cited Seventh Circuit holdings to that affect, which support his legal rationale. The Seventh Circuit similarly as the District Court, did not address the delay and current denial of pain medicine by Wexford. Likewise its opinion

made no mention of the plaintiffs claims that he is under on-going threat of injury in living. That he is sleeping 5 ft off the ground, already injured himself, that the threat continues despite the defendants refusing to grant him a commonly given low bunk or single cell permit. After the denial of the appeal by the seventh circuit, plaintiff was sent to an outside hospital for a MRI, which revealed "widened sulci at the bilateral parietal convexities suggest of focal parenchymal volume loss, slightly more pronounced on the left than on the right.." In other words, brain deterioration and/or loss of brain mass. Which is consistent with the presence of an underlying serious neurological disorder. Plaintiff still has not seen a neurologist, even months after defendants were made aware of the MRI reports.

Plaintiff now seeks certiorari of this interlocutory order and opinion of the Seventh Circuit on different grounds.

First, that the Seventh Circuit's decision departs from long-standing, established U.S. Supreme Court, Seventh Circuit and other sister circuit's precedent in determining that he did not establish a likelihood on the merits. That the seventh circuit applied a hieghtened, and oppressive burden of proof requirement on the prisoner-plaintiff at preliminary injunction proceedings.

Second, that the seventh circuit did not properly apply the principals of this courts holding in Farmer v. Brennan in its analysis of the submitted evidence. Particularly that plaintiff show a "better than negligible" chance of succeeding on the merits on the subjective awareness or culpable state of mind requirement of the deliberate indifference standard. That it did not consider competent, credible and admissible evidence. Substantive and circumstantial. In particular, the doctor defendants prior recorded recollections, notes and statements. Which would be admissible at trial. Notes

that reveal the doctos subjective knowledge of plaintiffs unaddressed pain and symptoms. Several months before an eventual, one time prescription of over the counter ibuprophen was given. Despite medical doctors, not plaintiffs, request for neurology consult and different imaging scans such as "brain stem MRI" and "EEG" as evidenced in the record.

Third, that alternatively, even if assuming arguendo that plaintiff lacked evidence at that time of "subjective awareness" of the individual doctor defendants as required by the holdings in Farmer. That the District Court and Seventh Circuit could have, and albiet should have, applied the Canton V. Harris analysis of deliberate indifference in determining the likelihood of success on the merits. This is due to an additional Monell claim that was brought not only in the verified complaint, but also the motion for preliminary injunction (C1; C2). Plaintiff contends that, regardless of doctors subjective awareness, the risk was "obvious" as articulated by this court in Canton. That also, in establishing the likelihood on the merits, the court should also have weighed the evidence under the Canton principles.

Rule 36 (a) Federal Rules of Appellate Procedure.

REASONS FOR GRANTING THE WRIT

There are various reasons for granting this writ, all of which are in the public interest, and have national implications throughout all circuit courts and district courts.

(1) The Seventh Circuit is in conflict with its own holdings
(2) It is in conflict with other circuit courts
(3) It adopts a hieghtened, oppressive burden of proof at preliminary injunction proceedings, which reject the principles of Helling, Estelle and Farmer
(4) The Supreme Court has not addressed this particular issue on equitable relief. In particular, how much evidence is enough evidence to establish likelihood on the merits in the context of the deliberate indifference standard.

(5) These issues raise questions of Constitutional importance.

It is true that this case does involve well-settled principles of law. In particular, the deliberate indifference standard and the eighth amendment to the U.S.Constitution and how its applied through the principles held in Estelle, Helling and Farmer. The question here is, involving a prisoner plaintiff, who moves for preliminary injunctive relief at the infancy stage of the case. And this prisoner plaintiff has only posession of circumstantial

evidence. But he still faces an on-going continuing harm: unresolved pain, and difficulty functioning with day to day activities. Plaintiff asks, where is the line drawn on the level of proof he must present to a judge sitting as a factfinder in a preliminary injunction proceeding? How much proof is needed to make a showing of likelihood of success on the merits to show subjective awareness?

Indeed this court in Farmer held that prisoners can show subjective awareness or otherwise "whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence" Farmer vs. Brennan 511 U.S. at 842 (emphasis added) and that "petitioner may establish respondents' awareness by reliance on any relevant evidence" id. at 848. Here, plaintiff demonstrated clear evidence of the doctor defendants, prior signed notes in the medical records, which characterize the condition as "involuntary" and "associated with pain" (Appx E. He demonstrated conflicting, and contradictory testimony by the defendant doctors as unworthy of belief. He used these pieces of evidence not only substantively to show that it was more likely than not that doctors knew of plaintiffs pain and symptoms; and disregarded it by not perscribing medication, but also used it as impeachment evidence under and authorized by the federal rules of evidence.

Similarly, he presented evidence in the medical records which evidenced his fall from the top bunk, as substantive evidence and corroborating evidence to his sworn affidavit where he stated that he is likely to fall or injure himself if defendants are not enojoined to provide him bottom bunk and single housing permits.

Which is consistent with this courts approach in Helling vs. McKinney. Which allowed Certiorari when there was, as here, a request for preliminary injunction. A request made by the petitioner as to the threat of future harm from particular housing of an inmate, leaving him under the whim of prison authorities to subject them to ETS. This court in Helling did not address what the requisite level of proof is needed to show "likelihood on the merits" or even the "subjective awareness" requirement under those circumstances, which are similar to this cases analysis. The right case is before this court today.

As previously stated, plaintiff here, moved for a preliminary injunction at the outset, for a neurological evaluation, which was not requested by the plaintiff, as the seventh circuit stated erroneously (AC48) but rather requested by Doctors themselves (AppxE;F) he requested that Wexford be enjoined to send him to one so he can obtain a definitive diagnosis. A diagnosis was essential in order to determine the right treatment as admitted by doctors, that these various conditions have "different" treatments (R17). He requested they be enjoined to provide him pain medication due to the on-going, and unresolv ed pain, not only just the delay of several months in first perscribing him only 6 weeks of ibuprophen. And he requested they be enjoined to provide housing accomodations to prevent injury, and at this time, further injury. The record here irrefutably showed that plaintiff was perscribed ibuprophen several months after his repeated complaints, and a handful of low grade pain relief thereafter in now approximately three years of being confined in the Illinois Dep't of Corrections. This left him having to endure extreme pain everyday. It showed that doctors

refused to perscribe him a bottom bunk or single housing permits, that he fell as a consequence. The record critically shows that multiple doctors submitted plaintiff for neurological evals, and numerous needed imaging scans, such as "brain stem mri" or suggesting a "eeg" (Appx E;F). The denial was made by a corporate utilization review doctor thousands of miles away from Illinois. Someone who never examined plaintiff. After briefing in the seventh circuit, plaintiff received new evidence which demonstrated more competent evidence that the corporate utilization doctor in Pennsylvania departed from the standard of care and displayed deliberate indifference: The Illinois Statewide Medical Director, Dr. Conway overided this corporation and Dr. Ritz and approved a consultation, thereby hightening the "likelihood of success on the merits".

However, even with this showing, the Seventh Circuit rejected this evidence in plaintiffs filed petition for rehearing. This is in conflict with its own Circuit. Where it was held that (1) delays in perscribing pain medication can amount to deliberate indifference, Gutierrez v Peters 111 F.3d 1364 (CA7 1997); Cooper v Casey 97 F.3d 914 (CA7 1996) (2) That the receipt of some treatment does not defeat a claim of deliberate indifference Cesal v Moats 851 F.3d 714,723 (CA7 2017) (3) that deliberate indifference can sometimes be shown with "circumstancial evidence" Hayes v Snyder 546 F.3d 516 (2008)("subjective awareness and deliberate indifference normally can be proved only with circumstantial evidence") (4) that "self reporting is often the only indicator a doctor has of a patients condition, and so there is no requirement that a prisoner provide objective evidence of his pain and suffering" Hayes v Snyder 546 F.3d.516 (CA7 2008). (5) that pain may be irreperable harm, Bentz v

Ghosh 718 Fed.Appx 413 (CA7 2017) (6) when the need for specialist treatment is known [as evidenced here by dr.'s requests, and the plaintiffs expert neurologists reports, as well as the IDOC medical directors overiding of Wexford's denials] the "obdurate refusal to provide it can amount to deliberate indifference", Hoban v. Wexford Health Sources Inc., 731 Fed.Appx 5030 (CA7 2018)

Likewise the Seventh Circuit did not even address the plaintiffs other requests in his motion for preliminary injunction: namely, the unaddressed pain and threat in living (bottom bunk and single cell requests). As reference, Mayoclinic and merkmanuals identify "chorea" or choeiform conditions as related to Huntingtons, Parkinsons Disease, Tardive Dyskenisia, and idiopathic/torsion dystonia, all serious medical needs.

ARGUMENT

THE SEVENTH CIRCUIT ERRED IN AFFIRMING THE DENIAL OF A MOTION FOR PRELIMINARY INJUNCTION

The U.S.Supreme Court in Estelle vs. Gamble included as among the acts which violate a prisoners Eighth Amendment rights, are those which "involve the unecessary and wanton infliction of pain" Estelle v Gamble 429 U.S. at 103, 97 S.Ct. 286 (1976), in its reliance on Gregg v. Georgia 428 U.S. at 178, 96 S.Ct. at 2925 (1976); Louisiana ex rel Francis v. Resweber 329 U.S. 459,463, 67 S.ct 374,376, 97 L.Ed. 422 (1947) and Wilkerson v. Utah 99 U.S. at 136. Estelle holds that 'these elementary principles establish the governments obligation to provide

medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs, if the authorities fail to do so, those needs will not be met. In worst cases, such a failure may actually produce physical torchure or lingering death...the evils of most immediate concern to the drafters of the amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose' citing Gregg v Georgia, supra at 173, 96 S.Ct. at 2924-25 (joint opinion) the 'infliction of such unneccesary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common-law rule that [I]t is but just that the public be required to care for the prisoner who cannot by reason of the deprivation of his liberty, care for himself, Estelle 429 U.S. at 103-104. Estelle concluded that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'... proscribed by the Eighth Amendment, this is true whether the indifference is manifested by prison doctors in their response to the prisoners needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfereing with the treatment once perscribed. Regardless of how evidenced, deliberate indifference to a prisoners serious illness or injury states a cause of action under §1983"' id. at 105.

The Supreme Court later held in Helling v. McKinney, that the "[Eighth] Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care, and must take reasonable measures to guarantee the safety of the inmates"' Helling v McKinneyy 509 U.S. at 31-32, 113 S.ct. at 2480, citing Hudson v Palmer 468 U.S. 517,526-27, 104 S.ct. 3194, 3200, L.Ed.2d 393 (1984), Washington v.

Harper 494 U.S. 210, 225, 110 S.ct. 1028,1038-39, 108 L.Ed.2d 178 (1990). The Helling court stated that "in a suit...insofar as it seeks injunctive relief to prevent substantial risk of serious injury from ripening into actual harm, the subjective factor, deliberate indifference, should be determined in light of the prison authorities current attitudes and conduct" Helling,Supra, at 36|| 113 S.Ct at 2482, or in other words, the Helling court did not require manifestation of actual harm before an injunction could be imposed.

The court in Farmer v. Brennan concurred. But stated that in establishing "deliberate indifference", a prisoner-plaintiff must show (1) that the condition is one that is "objectively sufficiently serious" Farmer v. Brennan 511 U.S. at 834, 128 L. Ed.2d 811 (1994) and (2) a subjective showing that the health professional disregarded a risk of harm which he was aware" id. at 834, or otherwise a "sufficiently culpable state of mind" id. A "sufficiently culpable state of mind" is one of "deliberate indifference" to an inmates health or safety Wilson supra 501 U.S. at 302-303, 111 S.ct. at 2326 (1991), the Farmer court described it as "a state of mind more blameworthy than negligence" id at835, that the "standard of purposeful or knowing conduct is not however necessary to satisfy the mens rea requirement of deliberate indifference for claims challenging conditions of confinement" id at 836. it equated "subjective awareness" with "criminal recklessness" standard as articulated in the Model Penal Code §202(2)(c), id. at ,rather than the "risk was obvious" test articulated in Canton v. Harris, 489 U.S. 378,09 S.Ct 1197, 103 L.Ed.2d 1112 (1989). But this standard in Farmer applied to establishing mens rea on individual defendants. The "obvious" risk test still, according to language of the precedent, still applied to municipal liability claims involving the conditions of confinement.

With that being stated. The Seventh Circuit here failed to apply these standards.

A:

SEVENTH CIRCUIT'S HOLDING IS IN CONFLICT WITH PRIOR SUPREME COURT AND SEVENTH CIRCUIT DECISIONS IN DETERMINING THAT PLAINTIFF DID NOT ESTABLISH THE LIKLIHOOD OF SUCCESS ON THE MERITS

As stated above, the principles of Estelle, Helling and Farmer make it clear. That pain, deterioration of health of a prisoner can violate the eighth amendments ban on cruel and unsual punishment. That the constitution does not mandate manifestation of harm before a prisoner can obtain equitable relief, and that prison authorities are deliberately indifferent to a prisoners serious medical needs if they have "knowledge" of a risk and disregard it. That it can be established through "circumstantial evidence" or "reliance on any relevant evidence" Farmer, at 842 and 848. Likewise, the Seventh Circuit previously applied this standard in Gutierrez v Peters 111 F.3d. 1364 (CA7 1997) where it held that "subjective awareness and deliberate indifference normally can be proved only with circumstantial evidence" id. at 1364. That "self reporting is often the only indicator a doctor has of a patients condition, and so there is no requirement that a prisoner provide objective evidence of his pain and suffering" Hayes v. Snyder 546 F.3d 516 (CA7 2008). True, these cases were ruling on issues relating to summary judgment rather than preliminary injunction relief. But plaintiff does not see why the evidence cant be applied the same. Indeed, the summary judgment standard entails just that, whether a plaintiff could produce evidence

so as to allow a "factfinder [to] conclude the defendants deliberately ignored or seriously aggravated Ayoubis condition" CA7 op. at pp.3. Of course plaintiff would need to show similar evidence to survive summary judgment and proceed to trial. Why should this same evidence not be considered here?

The Seventh Circuit here has seemingly departed from the common standards set forth in Farmer and Helling. And including its own holdings. It adopts a hieghtened burden of proof to show likelihood on the merits, which in its previous holdings describes as a "better than negligible" chance of suceeding on the merits, Valencia v. City of Springfield, Illinois 883 F.3d. at 966 (CA7 2018) that "a party moving for preliminary injunctive relief need not demonstrate a likelihood of absolute success on the merits" id. at 966. But that is precisely what standard that was placed on the plaintiff. Absolute success. Rather than equittable balancing and a better than negligible chance of succeeding on the merits.

Plaintiff presented evidence in the form of the doctors testimony acknowledging knowledge of the pain (R11,12,45,67, their notes and prior recorded recollections (Appx E)which evidences subjective awareness, and pharmacological records which irrefutably evidence one ibuprophen pill for a dental issue, and absolutely zero pain medication after that until several months later (Appx E) convienently after defendant Myers was served with the lawsuit. this departs from its holdings in Cesal v Moats 851 F.3d 714,723 (CA7 2017) which held that the reciept of some treatment does not defeat a claim of deliberate indifference, and Gutierrez v Peters which stated "this courts post Estelle decisions, as well as those of the other circuit courts, have repeatedly recognized that delays in treating painful medical conditions that are

not life-threatening can support eighth amendment claims", Gutierrez 111 F.3d 1364 (CA7 1997), See also Cooper v. Casey 97 F.3d 914 (CA7 1996)(2 day delay), Antonelli v. Sheahan 81 F.3d 1422 (CA7 1996)(delay in addressing 'pleas' for psychological treatment), Murphy v Walker 5 F.3d 714 (CA7 1995)(several months delay) Bentz v Ghosh 718 Fed.Appx 413 (CA7 2017)(delay in treating tooth pain in preliminary injunction proceedings), Barry v Peterman 604 F.3d 435,440 (CA7 2010)(delay in treating tooth pain), Rivera v Gupta 836 F.3d. 839,841-42(CA7 2016)(few days delay), Rodriguez v Plymouth Ambulance Serv. 577 F.3d. 816,830 (CA7 2009)(four-day delay), Edwards v Snyder 478 F.3d 827,830-31 (CA7 2007). This also departed from other circuit holdings, which held the same, that delays can constitute deliberate indifference, see Boyd v Knox 47 F.3d 966 (CA8 1995); Fields v Gander 734 F.2d 1313 (CA8 1984); Boretti v Wiscomb 930 F.2d 1150 (CA6 1991); Brown v Hughes 894 F.2d 1533,1538 (CA11); Hunt v Dental Dept 865 F.2d 198, 201 (CA9 1989); Loe v Armistead 582 F.2d 1291 (CA4 1978). But that is unequivically exactly what occurred here. Not only several months delay initially. But currently, absolutely zero medication for the pain or otherwise.

This "on-going" violation similarly was not acknowledged by the Seventh Circuit. Even though plaintiff presented evidence of ongoing pain, and also ongoing risk of injury in living. This concept and principle was also highlighted in Supreme Court precedent. See Hutto v Finney 437 U.S. at 685-688, 98 S.Ct. at 2570-2572 (upholding order designed to halt an "ongoing violation" in prison conditions) likewise in Farmer, "this attatches to conduct at the time suit is brought and persisting thereafter . An inmate seeking an injunction on the ground that there is a contemporary violation of a nature likely to continue" Farmer at 845-846, Quoting United States v. Oregon State Medical Soc. 343

U.S. 326, 333, 72 S.Ct. 690,695, 96 L.Ed. 978 (1952). But the Seventh Circuit failed to apply this standard, and apply it to the current evidence. It failed to consider "prison authorities current attitudes and conduct" Farmer at 845, Helling at 36. There is no disputing that he still suffers pain, that he still has no single cell housing or bottom bunk permit, that he fell already and injured himself, that the only neurologist and expert witness in this case insisted on the necessity to obtain a consultation, and the top medical director, albiet a state employee,Director Conway overided these very defendants denials. None of this was considered.

The District court, denied injunctive relief in part, on the premise that "Ayoubi argues that he will suffer irreperable harm as the involuntary movements cause him pain....the undersigned notes that Ayoubi's symptoms have persisted for nearly two and a half years and he has not provided evidence that his symptoms have escalated or that his health has deteriorated" (Appx B). This conclusion is not only inconsistent with the Seventh Circuit holding in Hayes, 546 F.3d 516 at *17 which stated that "self reporting is often the only indicator a doctor has of a patients condition....there is no requirement that a prisoner provide objective evidence of his pain and suffering", citing Greeno v Daley 414 F.3d at 655 (CA7 2005) but also its holding in Hoban v Wexford Health Sources Inc. 731 Fed.Appx 530 (CA7 2018) which that particular district court alleged the same, that Hoban wouldnt suffer irreperable harm because "his complaints go back as far as 2011, id. at 4. But the seventh circuit reasoned that "even though Hoban endured pain since 2011, his pain is ongoing and unresolved" id. at 86, regardless if that case dealt with the summary judgment phase or not, it is operatively analogous to this case. Evidence is evidence, no matter what "proceeding" its in.

But it does not end at Hoban, or Hayes. It flies in the face of the Holding in Helling v McKinney. which held that "it would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. The courts of appeals have plainly recognized that a remedy for unsafe conditions need not await a tragic event" Helling 509 U.S. at 33. It stated that "the Eighth Amendment protects against future harm to inmates is not a novel proposition. The Amendment, as we have said, requires that inmates be furnished with the basic human needs, one of which is 'reasonable safety'" id. at 33 citing DeShaney, Supra, 489 U.S. at 200, 109 S.Ct. at 1005. But a "tragic event", has already occurred, plaintiff fell already, and sufferred pain over and over. But it doesnt end there, the pain continues, not surprisingly unaddressed, and the threat in living continues by plaintiff still being without a permit for specialized housing.

B:

SEVENTH CIRCUIT DID NOT PROPERLY CONSIDER CIRCUMSTANTIAL EVIDENCE AS ADVISED BY THE SUPREME COURT IN FARMER VS. BRENNAN

The Seventh Circuit affirmed the denial of this request for injunctive relief on the premise that plaintiff did not point "to anything in the record to suggest that his care was 'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate a medical condition"' CA7 Op. at pp.3, citing Edwards v. Synder 478 F.3d 827,831 (CA7 2007). It

determined that the "record reflects that, in response to his complaints of pain, the defendants placed him under close observation for several days in the infirmary, where he was given laboratory tests and perscribed motrin for pain relief. Based on the assessments from that time and other records,, the doctors concluded that the appropriate treatment plan was to continue to monitor his condition rather than refer him to an outside specialist" CA7 opn at pp. 3. This finding is erroneous in several different ways. First, the record does not reflect that plaintiff was "closely" monitored for "several days" in the infirmary. It actually reflects that the defendants admitted at the hearing that its was a total of about 8 observations by nurses lasting seconds in the span of 3 days, not several. The third day plaintiff was discharged in the morning (C2 att1-4). Next the record does not show he was perscribed any pain medicine in the infirmary, to the contrary, the submitted medication record shows it clear as day, 1 ibuprophen pill for a dental issue, then several months delay until Dr. Myers decided to perscribe generic ibuprophen after he was served with a lawsuit (Apx E), then a complete absence of adequate pain treatment after that, even 2 years after the inception of this case. But that is not all. The record reflected "inablility" of doctors to diagnose his condition (Report of Dr Kohn Appx D) this inability was not surprising because the defendants themselves admitted it is "difficult" to diagnose (R11,R27). Which is reasonable that they would request a neurology evaluation on multiple occasions (Appx E;F) note the need for "eeg" and "brain stem MRI" scans (Appx E;f) And even yet, there own State Medical Director going against the defendants by overiding them (Appx F) none of this was considered. If it was, it was considered erroneously. The Doctors insisted they were not told about pain at

times during their testimony was easily contradicted by their own testimony at the same hearing where they acknowledged the existence of the pain (R11||12,45,67) but also their own notes, which they signed, evidencing no other than "involuntary" movements and "associated with pain" (Appx E) but yet a total absence of pain medicine or appropriate diagnostic treatment. This is admissible evidence that can be presented to a jury under the Federal Rules of evidence.

Particularly, this evidence is characterized by the rules of evidence in different ways. It can be considered as a "business record" under 801 FRE. An "Admission by Party Opponent" or a "Statement against Interest" under FRE 801. It could be used as evidence for character for truthfulness or for impeachment under rule 608 FRE or 609 FRE. It could also be used arguably as also probative under FRE 404 (b) to show intent, motive M.O., propensity, plan, preparation etc. For eg. Myers testified that he observed plaintiff on numerous occasions throughout several months time span, and in those occasions he has observed plaintiff in the courtyard with "no gait issues", inferring that plaintiff was faking (R56), he relied on this one time notation in substantiating his claim or defense (R56). But he was questioned about the acuracy or veracity of his note because it was made the same day, and after he was served with summons in this case (R56) he denied of course (R56), but any rational juror can wiegh these facts for purposes of impeachment under 608 and 404 FRE. The "record" that the Seventh circuit alleges to be devoid of evidence is infact riddled with it. These doctors on numerous occasions noted the presence of pain, and involuntary movement. The record showed a prior bottom bunk perscription by a LPN who is not a party to this action, a

permit which consequencially expired, that the defendants refused to extend or re-issue. Which resulted in of course, an eventual fall (AC48) not immediately, but over time. Something this very court acknowledged could happen, "We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week, or month or year", Helling 509 U.S. at 33. But the District court, and the Seventh Circuit's logic is not consistent with this principle.

Indeed, all of this was presented to the Seventh Circuit. Likewise, the recent overiding of the denials by the State Medical Director Dr. Conway, and evidence of "progression", continued involuntary movements and pain in the recent records was submitted in his petition for rehearing. Records which were not at the time of briefing existent or available to plaintiff. (AC48) This evidence which established defendants "current attitudes and conduct" Helling, Supra, at 36, 113 S.ct. at 2482 and the current state of plaintiffs condition, which is not in line with what the district court alleged, that there was no "evidence of progression or deterioration" (Appx B). Likewise this circumstantial and substantive evidence was supposed to be considered by the Seventh Circuit according to holdings from the U.S. Supreme Court.

"Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence" Farmer v Brennan 511 U.S. at 842, citing C.F.Hall (cautioning against "confusing mental state with the proof of its existence") , and a factfinder may also conclude that a prison

official knew of a substantial risk from the very fact that the risk was "obvious" id. at 842, citing LaFave & Scott §3.7.p335 ("[i]f the risk is obvious, so that a reasonable man would realize it, we might infer that [the defendant] did in fact realize it, but the inference cannot be conclusive, for we know that people are not always conscious of what reasonable people would be conscious of"). Farmer gave an example of such evidence, "if an eighth amendment plaintiff presents evidence showing that a substantial risk of inmate attacks [or in this case knowledge of pain or difficulty functioning] was 'longstanding, pervasive, well documented or expressly noted by prison officials in the past, and the circumstances suggest that the defendant official being sued has been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk"' id at 842-843 But the Seventh Circuit did not accept this evidence for what it is. It departed from Farmer. Indeed Farmer mandated nothing less than to accept competent, admissible, circumstantial evidence, [a] "petitioner may establish respondents awareness by reliance on any relevant evidence" id. at 848. Of course the seventh circuits prior decisions adopted this approach that "subjective awareness and deliberate indifference normally can be proven only with circumstantial evidence" Hayes v Snyder 546 F.3d 516 at *20 (CA7 2008) That is,until this departure in this appeal.

Strikingly, this does not seem to be in lockstep with its approach in Valencia v. City of Springfield, Illinois 883 F.3d. 959,966 (CA7 2018) where it didnt require an "absolute" likelihood of success on the merits, but a "better than negligible" chance of it. id at 966. However, there is nothing else that the

plaintiff can produce in this case short of a signed confession by the defendants. Therefore plaintiff clearly presented enough evidence for Wexford to be enjoined to alleviate his ongoing pain, risk from further falls and serious injury, and appropriate diagnosis by no longer stonewalling plaintiffs attempts to obtain a neurology consultation. See also as reference, Maltby et al v. Chicago Great Systern Ry.Co 347 Ill.App 441 (1952), 31 C.J.S., Evidence §272 p.1023, Jones, Commentaries on the Law of Evidence Vol 2 Sec 235-236 p. 349 and 362; see also Am.Jur.Evidence Sec 545 p.461.

C:

PRISONER-PPLAINTIFF NEED NOT DEMONSTRATE A CULPABLE MENTAL STATE IN ESTABLISHING A LIKLIHOOD ON THE MERITS FOR THE MONELL CLAIM AS ARTICULATED BY THE SUPREME COURT IN CANTON VS. HARRIS

Even if assuming arguendo that plaintiff lacked evidence of subjective awareness or deliberate indifference under the second prong of the standard against individual defendants. Alternatively, his claim of municipal liability against Wexford and IDOC for "maintaining cost-cutting policies" that led to, or artibuted to, the delays or denials for treatment, pain medication or permits need not demonstrate the "mens rea" requirement under Canton vs. Harris., 489 U.S. 378,109 S.ct. 1197, 103 L.Ed.2d 1112 (1989); Monell vs. New York City Dep't of Social Services 436 U.S. 112, 127, 108 S.Ct. ( ) and Board of County Comm'rs vs. Brown 520 U.S. 397, 404, 117 S.ct.1382 (1997). As stated in Farmer regarding the mens rea of individual defendants "here

a subjective approach isolates against those who inflict punishment ; there it isolates ~~those against whom punishment~~ should be inflicted. But the result is the same, to act recklessly in either setting, a person must 'consciously disregard' a substantial risk of serious harm" Farmer 511 U.S. at 839 citing Model Penal Code §202(2)(c), in holding that criminal recklessness should be the standard for second prong deliberate indifference. But Farmer did point out "needless to say, moreover, considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity as distinct from that of a governmental official" id at 841, then going on to state that "it would be hard to describe the Canton understanding of deliberate indifference, permitting liability to be premised on obviousness or constructive notice, as anything but objective" id. at 841.

Here, it is undisputed that plaintiff brought a Monell claim. Arguing that systemic, unconstitutional cost-cutting policies were the driving force behind the individual defendants actions. This was articulated not only in the verified complaint (c1) but also the motion for preliminary injunction (C2). Therefore the District court could have, and should have applied that standard alternatively. That the risk was obvious, due to constructive notice. This court in St.Louis vs Proprotnik 485 U.S. 112,127, 108 S.Ct 915 (1988) held that municipalities can be found liable to that extent. It was also highlighted by the 6th Circuit, which defined the requirements for such liability, "plaintiff must show (1) a clear and persistent pattern of mishandled medical emergencies for prearraignment detainees (2) notice or constructive notice of such pattern (3) tacit approval of the deliberate indifference and failure to act amounting to an official policy of inaction and (4) that the custom or policy

Ancaba v Prison Health Services Inc., 769 F.2d 700,705-06 (CA11 1985)(policy of limited funding and requiring court orders for certain medical treatment was deliberately indifferent policy), see also Gibson vs. County of Washoe, Nev 290 F.3d 1175,1190-91 (CA9 2002); Colle vs Brazoz County, Tex 981 F.2d 237,245(CA5 1993)(inadequate monitoring lack of arraingments for transfers to medical facilities); Davis vs Carter 452 F.3d 686,691-94 (CA7 2006)(holding plaintiffs deliberate indifference claim of a municipal policy of inordinate delay in providing methadone treatment was supported by evidence of absence of policies and procedures to ensure timely treatment)

Therefore, alternatively, this court can find that the Seventh Circuit did err in its anaylisis of the likelihood on the merits by not applying the Canton standard of deliberate indifference as to the Monell claim. And the appropriate remedy would be to remand to the Seventh Circuit to apply that standard.

CONCLUSION

There is no mistake here, This Honorable Court is the last hope for the plaintiff. It spelled it out perfectly in Estelle, "infliction of unnecessary suffering on prisoner by failure to treat his medical needs is inconsistent with contemporary standards of decency and violates the Eighth Amendment", There is no decency in keeping the plaintiff here suffering through ' needless pain and suffering', and repeated falls, this was never his perscribed sentence, nor should it be according to our framers and moreover, common morality and compasion that

every human being should possess. Whether they are a judge, juror, prisoner, or landscaper. Regardless of background. This is the common moral decency and compassion the plaintiff asks this Honorable Court today. Grant this writ in the interests of justice, the public, fairness and decency.

RESPECTFULLY SUBMITTED

BY: /s/ _____
Petitioner

Dated and Certified on this

22 Day of March 2021

Firas Ayoubi #R-66956
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