No. 24-5915

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIE ORR — PETITIONER
(Your Name)

vs.

ZORIAN TRUSEWYCH, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willie Orr
(Your Name)

Western I.C.C. 2500 Rt. 99 South
(Address)

Mt. Sterling, IL 62353
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I.

DID THE U.S. DISTRICT COURT, FOR THE CENTRAL DISTRICT OF ILLINOIS, ERR WHEN THE COURT GRANTED THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT?

II.

WHAT LEVEL OF MEDICAL MALPRACTICE CONSTITUTES A DELIBERATE INDIFFERENCE?

III.

DID THE U.S. APPELLATE COURT, FOR THE SEVENTH CIRCUIT ERR, WHEN THE COURT AFFIRMED THE U.S. DISTRICT COURT'S JUDGMENT AND DENIED PLAINTIFF'S MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS, HOLDING THAT PLAINTIFF HAD NOT INDENTIFIED A GOOD FAITH ISSUE?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Dr. Zorian Trusewych, and Nurses: Heather Miller, Jessica Givens, Jennifer Flynn, and Penny Smith; all employees of Wexford Health Sources.

Defendants are represented by: Andrew M. Ramage, Brown Hay & Stephens LLP, Suite 1000, 205 S. Fifth St. Springfield, IL 62705. Phone # 217-544-8491, Fax: 217-241-1333.

RELATED CASES

District Court No. 3:21-cv-03111 Orr v. Trusewych.

U.S. Court of Appeals for the Seventh Circuit; No. 24-1247.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1, ex. F to the petition and is

[✓] reported at No. 24-1247 Orr v. Trusewych; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix 1, ex. B to the petition and is

[✓] reported at District Court No. 3:21-cv-3111; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 26, 2024.

[✓] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 26, 2024, and a copy of the order denying rehearing appears at Appendix 1, ex F.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On June 19, 2019; plaintiff saw Nurse Givens, and complained of nausea and a headache on the left temporal area and rated his pain a 5 out of 10 on the pain scale.

On July 2, 2019; plaintiff saw Nurse Smith, complaining of pain on the left side of his face and temple and rated his pain a 4-5 out of 10. Nurse Smith noted there was no redness, swelling, or heat at plaintiff's temple. She prescribed 200 mg of ibuprofen three times per day for three days and instructed plaintiff to return if his symptoms worsened or interfered with his daily activities.

On July 9, 2019; plaintiff saw Defendant Dr. Trusewych in the health care unit. Plaintiff complained of a left-sided temporal headache and reported he had no aura, nausea, or photophobia. Plaintiff showed no signs of acute distress. Dr. Trusewych prescribed 500 mg of Naproxen two times a day for two weeks.

On July 25, 2019; Plaintiff saw Dr. Trusewych for a follow-up visit about his left TMJ pain. Plaintiff reported he was doing better but still having pain. Dr. Trusewych observed plaintiff was well-nourished, showed no signs of acute distress, and his left ear canal appeared within normal limits. Dr. Trusewych noted a tender TMJ and diagnosed plaintiff with TMJ. Dr. Trusewych scheduled a follow-up appointment for plaintiff's TMJ and referred plaintiff for a dental evaluation.

During the dental evaluation on July 30, 2019; the dentist noted Plaintiff had pain in the left TMJ due to clenching.

During an appointment with Nurse Miller on April 24, 2020, Plaintiff complained of a throbbing pain on the left side of his head and scalp and rated his pain a 7 out of 10. Plaintiff reported the pain in his left temple had been ongoing since last year, and the pain in his scalp/ear had lasted for a month. Nurse Miller noted Plaintiff's scalp was tender to the touch and that Plaintiff

had already been prescribed Naproxen.

During an appointment with Nurse Flynn at 12:30pm on June 6, 2020, Plaintiff complained of a headache and a throbbing pain in his temple and rated the pain a 6 out of 10. Plaintiff did not have any dizziness or photophobia. Nurse Flynn prescribed acetaminophen and a cool compress and instructed Plaintiff to stay in a quiet, dark room and to return if his symptoms persisted or intensified.

When Plaintiff saw Nurse Flynn a second time at 2:40pm on June 6, 2020, he reported symptoms of sweating, nausea, headache, dizziness, and ear pain. Plaintiff's blood sugar was recored as 173. Due to Plaintiff's symptoms, Nurse Flynn immediately referred Plaintiff to the doctor.

At 4.00pm June 6, 2020; Dr. Trusewych referred Plaintiff to Sarah D. Culbertson Memorial Hospital ("CMH") to rule out hypokalemia. At the emergency department Plaintiff complained of nausea, vomiting, dizziness, and trouble hearing out of his left ear. Plaintiff stated he had been outside walking in the heat that morning. Plaintiff was diagnosed with left otitis media (ear infection) and heat exhaustion. The hospital physician prescribed Augmentin and Zofran as needed for an ear infection and nausea. See Appendix No. 2, pages 1-16.

On June 29, 2020; the ENT from Blessing Physician Services, found Plaintiff to have profound neorosensory hearing loss in his left ear. The ENT's assessment was "left sudden hearing loss." The ENT recommended an MRI to rule out acoustic neuroma. See App. No. 2, pages 18-21.

On July 28, 2020; Plaintiff filed his initial grievance; see App. No. 2, pages 26-28. After completing the grievance process, Plaintiff filed on May 13, 2021; a complaint under 42 U.S.C. § 1983 raising that Defendants Dr. Zorian Trusewych and nurses Heather Miller, Jessica Givens, Jennifer Flynn, and Penny Smith violated

his Eighth Amendment rights at Western Illinois Correctional Center, when they were deliberately indifferent to his ear infection and pain. See App. No. 1, exh. A; (42 U.S.C. § 1983 Complaint).

On the date of January 22, 2024; the United States District for the Central District of Illinois, Judge James E. Shadid, entered an Order Granting the Defendants Motion for Summary Judgment. See District Court's Order at App. No. 1, exh. B.

On the date of February 07, 2024; Plaintiff filed Notice of Appeal, along with Motion for Leave to Appeal in forma pauperis, and Motion for Appointment of Counsel. On the date of Feb. 26, 2024 the U.S. District Court denied Plaintiff's Motion for Leave to Appeal in forma pauperis, and his Motion to Request Counsel. See U.S. District Court's Order, at App. No. 1, exh. C.

On February 26, 2024; an Appeal to the U.S. Court of Appeals for the 7th Circuit was filed. On Appeal Plaintiff filed a motion asking the Appellate Court to grant him Leave to proceed on Appeal in forma pauperis, and to appoint Counsel; and on June 27, 2024 Plaintiff's Motion to Request Counsel was denied, and on June 28, 2024; Plaintiff's Motion for Leave to proceed on Appeal in forma pauperis was denied; and Plaintiff was ordered to pay the $605.00 appellate fee within (14) days. See App. No. 1, exhibits D and E.

On July 26, 2024; the U.S. Court of Appeals for the 7th Circuit Dismissed Plaintiff's Appeal, for failure to pay the required docketing fee. See App. No. 1, exh. F.

Plaintiff now respectfully moves, pursuant to 28 USCS § 2101, to timely file a petition in the United States Supreme Court, for Writ of Certiorari.

III.

REASONS FOR GRANTING THE PETITION

I.

THAT THE U.S. DISTRICT COURT, FOR THE CENTRAL DISTRICT OF ILLINOIS, ERRED WHEN THE COURT GRANTED DEFENDANTS MOTION FOR SUMMARY JUDGMENT; IN VIOLATION OF PETITIONER'S RIGHTS TO DUE PROCESS. SEE 14th AMENDMENT OF THE U.S. CONSTITUTION.

1. Plaintiff raises, that he suffers permanant (left ear) hearing loss, because of Dr.Zorian Trusewych's medical malpractice, that amounted to a deliberate indifference, and violated Plaintiff's rights not to be subjected to cruel and unusaul punishment; see 8th Amendment of the U.S. Constitution.

2. Moreover, Plaintiff raises that the U.S. District Court for the Central District of Illinois, granted Defendants Motion for summary judgment, denied Plaintiff relief, and that the District Court's order was in error, and violated Plaintiff's rights to due process of the law; see the 14th Amendment of the U.S. Constitution.

3. In the District Court's order, the court held, in relevant part, to wit: ("After considering the totality of the care Dr. Trusewych provided, no reasonable jury would find that he was diliberately indifferent to plaintiff's seriuos medical needs. The record shows that Dr.Trusewych routinely and consistently provided treatment, prescribed medications, and referred Plaintiff to a dentist, the emergency room, multiple ENT evaluations, and a neurologist. Dr.Trusewych also followed the specialist' recommendations and referred Plaintiff for multiple MRIs, X-rays, and laboratory test. Plaintiff has offered no evidence to show that Dr. trusewych violated his Eighth Amendment rights. Therefore, Dr. Trusewych is entitled to summary judgment."). See District Court's order, at App. No. 1, exh. B.

4. Plaintiff raises, that the only care Dr.Trusewych provided before Plaintiff loss his hearing, was that he misdiagnosed the Plaintiff, wrongfully prescribed Plaintiff Naproxin (a medication plaintiff did not need), and sent Plaintiff to the prison's dentist, (who did no test, X-rays, and did not even touch plaintiff during the meeting).

5. In the District Court's order, the court held: that Dr. Trusewych reffered Plaintiff to a dentist, the dentist noted: Plaintiff had pain in the left TMJ due to clenching. See U.S. District Court's order, at App. No. 1, exh. C., (page 3).

6. Plaintiff declares, that he is not a clencher, and never had a discussion with the dentist about clenching. Plaintiff would testify to this at trial.

7. Moreover, after Plaintiff lost his hearing (left ear) Plaintiff was reffered by the ENT, for am MRI, of his brain (head); in the MRI report, it states in relevant part: ("There is no diffusion restriction to suggest acute/recent infarction. No acute intracranial hemorrhage, midline shift or mass effect. The size and configuration of the ventricles and sulci are normal for patient's age. There is no hydrocephalus. The basilar cisterns are preserved. There are no extra-axial collections. Dedicated imaging through the posterior fossa was obtained. There is preservation of the expected T2 hyperintense signal at the inner ear structure on both sides. The bilateral cranial nerve 7/8 complex has a symmetric course and there is no pathologic enhancement. The bilateral cerebellopontine angle cisterns remain patent. Note made of a developmental venous anomaly in the medial left cerebellum. Bilateral mastoid air cells are clear. The bilateral globes are symmetric. Tiny polypoid mucosal thickening in the medial right maxillary sinus. IMPRESSION: 1. Bilateral cerebellopontine angle cisterns are clear. 2. No acute/recent infarction, intracranial hemorrhage or enhancing parenchymal mass."). See App. No. 2, pages 24-25.

8. Plaintiff raises, that if an expert testified at a trial it's a strong probability, that an expert would testify that: (if a TMJ is inflaimed to the point that it causes hearing loss, that the MRI would have shown that). Plaintiff also raises, that it's a strong probability that an expert would testify that: (the antibiotics that were prescribed to Plaintiff, would not cure or fix a TMJ disorder, and that the proper way to confirm and/or diagnose a TMJ disorder is by X-ray examination). Given the facts and circumstances, Plaintiff could show that the dentist took the reason, Dr.Trusewych sent Plaintiff to him, and wrote down a common cause of TMJ disorder, to go along with Dr.Trusewych's misdiagnoses; (which was all unsupported, where no test, X-rays, or any other medical research was done to make that determination).

9. The District Court also held; that Dr.Trusewych prescribed Plaintiff medication. Plaintiff raises, that after Dr.Trusewych misdiagnosed Plaintiff with having a TMJ disorder, he prescribed Plaintiff 500 mg Naproxen (a medication for pain and arthritis); which was the wrong medication, given the fact the diagnoses was wrong.

10. Also, Plaintiff raises that in the beginning, and before the permanant injury, Plaintiff told Dr.Trusewych that he thinks it could be an infection; see also, App. No. 1, exh. A; (Plaintiff's 42 U.S.C. § 1983 complaint); and App. No. 2, pages 26-28; (Plaintiff's initial grievance). Also, Plaintiff raises that during a trial, it's a strong probability that an expert would testify that the symptoms Plaintiff described to Dr.Trusewych are common symptoms of an ear infection.

11. Federal Rule of Civil Procedure 56 governs motion for summary judgment Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Archdiocese of Milwaukee v. Doc, 743 F.3d 1101, 1105 (7th Cir. 2014), citing Fed. R. Civ. P. 56 (a). Accord Anderson v. Donahoe, 699 F.3d 989, 994 (7th Cir. 2012). A genuine issue of material fact remains "if

the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Accord Bunn v. Khoury Enterpr., Inc., 753 F.3d 676, 681-82 (7th Cir. 2014).

In assessing a summary judgment motion, the district court views the facts in the light most favorable to, and draws all reasonable inferences in favor of, the nonmoving party. Anderson v. Donahoe, 699 F.3d 989, 994 (7th Cir. 2012); Delapaz v. Richardson, 634 F.3d 895, 899 (7th Cir. 2011). As the Seventh Circuit has explained, as required by Rule 56 (a), "we set the facts by examining the evidence in light reasonably most favorable to the non-moving party, giving [him] the benefit of reasonable, favorable inferences and resolving conflicts in the evidence in [his] favor." Spaine v. Community Contacts, Inc., 756 F.3d 542 (7th Cir. 2014).

12. The District Court held: ("The records show that Dr.Trusewych routinely and consistently provided treatment, prescribed medications, and referred Plaintiff to a dentist,"). Plaintiff raises, that Dr. Trusewych's diagnoses was wrong; hence, his initial medication prescription was also wrong and ineffective. The court stated, that Dr.Trusewych sent Plaintiff to the Prison's dentist, but Dr.Trusewych never ordered any x-rays or laboratory test, neither did the dentist; (despite Plaintiff telling Dr.Trusewych that it felt like it could be an infection, and that the pain was getting worst. Moreover, it's a strong probability that an expert would testify at a trial, (that the proper way to diagnose and/or confirm a TMJ disorder is by x-ray).

Also, in the District Court's ruling, the Court went on to state, to wit: that Dr.Trusewych referred Plaintiff to the emergency room, multiple ENT evaluations, and a neurologist. Dr.Trusewych also followed the specialist recommendations and referred Plaintiff for multiple MRIs, x-rays, and laboratory test. Plaintiff raises, that all the above could have been avoided, had Dr.Trusewych ordered x-rays and laboratory test earlier. Moreover, the fact that Dr.Trusewych did not order any lab test or x-rays, until after other professionals suggested he do so; supports a deliberate indifference claim, where it shows Dr.Trusewych's medical decisions so deviated from professional standards that it amounted to deliberate indifference.

13. The Seventh Circuit has held that the deliberate indifference standard applies to detainees claims against correctional staff, but the due process "professional judgment" standards applies to claims against medical professionals. Chavez v. Cady, 207 F.3d 901, 905 (7th Cir. 2000). However, it has also said that this standard is "comparable" to the deliberate indifference standard and "requires essentially the same analysis." That is: "The trier of fact can conclude that the professional knew of the need from evidence that it was obvious and, further, it can be assumed that "what might not be obvious to a lay person might be obvious to a professional acting within his or her area of expertise." Id. (citation omitted); see Estate of Cole by Pardue v. Fromm, 94 F3d 254, 261-62 (7th Cir. 1996); (stating that deliberate indifference in a detainee case "may be inferred based upon a medical professional's erroneous treatment decision only when the medical professional's decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment"; stating that this standard is borrowed from the due process/professional judgment standard of Youngberg v. Romeo, 457 U.S., 307, 323, 102 S.Ct. 2452 (1981).

14. Plaintiff raises, that given the fact, that Dr.Trusewych's diagnoses was based entirely on a guess, and despite Plaintiff's continuous complaints and reports that the pain was getting worse, that Dr.Trusewych never ran or ordered any test or x-rays; that a reasonable jury could find that Dr.Trusewych's medical decisions was such a substantial departure from accepted professional judgment, practice, or standards; that it demonstrated a deliberate indifference, and that the District Court for the Central District of Illinois erred when it granted the Defendants summary judgment.

15.("It is 'clearly established' that medical treatment may so deviate from the applicable standard of care as to evidence deliberate indifference; conflicting expert opinions may create a factual question

as to deliberate indifference"); Moore v. Duffy, 255 F.3d 543, 545 (8th Cir. 2001).

Given the circumstances in the present case, ("Plaintiff should be permitted to prove that treatment 'so deviated from professional standards that it amounted to deliberate indifference"); Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1990).

II.

WHAT LEVEL OF MEDICAL MALPRACTICE CONSTITUTES A DELIBERATE INDIFFERENCE?

16. The Eighth Amendment prohibits cruel and unusual punishment, and the deliberate indifference to the "serious medical needs of a prisoner constitutes the unnecessary and wanton infliction of pain forbidden by the Constitution." Rodriguez v. Plymouth Ambulance Serv., 577 F.3d 816, 828 (7th Cir. 2009). A prisoner is entitled to "reasonable measures to meet a substantial risk of serious harm"- not to demand specific care. Forbes v. Edgar, 112 F.3d 262, 267 (7th Cir. 1997). A prisoner's dissatisfaction with a medical professional's prescribed course of treatment does not give rise to a successful deliberate indifference claim unless the treatment is so "blatantly inappropriate to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition." Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (quoting Thomas v. Pate, 493 F.2d 151, 158 (7th Cir. 1974)).

17. In order to prevail on a claim of deliberate indifference a prisoner who brings an Eighth Amendment challenge of constitutionally-deficient medical care must satisfy a two-part test. Arnett v. Wabster, 658 F.3d 742, 750 (7th Cir. 2011) (citing Johnson v Snyder, 444 F.3d 579, 584 (7th Cir. 2006)). The first consideration is whether the prisoner has an "objectively serious medical condition." Arnett, 658 F.3d at 750. Accord Greeno, 414 F.3d at 653. "A medical condition is objectively serious if a physician has diagnosed it as requiring treatment, or the need for treatment would be obvious to a layperson." Hammond v. Rector, 123 F.Supp. 3d 1076, 1084 (S.D. Ill. 2015) (citing Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014)). It is not necessary

for such a medical condition to "be life-threatening to be serious; rather, it could be a condition that would result in further significant injury or unnecessary and wanton infliction of pain if not treated." Gayton v. McCoy, 593 F.3d 610, 620 (7th Cir. 2010). Accord Farmer v. Brennon, 511 U.S. 825, 828 (1994)(violating the Eidhth Amendment requiers "delibereate indifference to a substantial risk of serious harm").

18. Plaintiff raises, that in Gordon v. Campanella, 2017 WL 1105912; the court held: ("The allegations in the Complaint satisfy the ojective component of this claim for screening purposes. A medical condition is considered objectively serious if it has been diagnosed by a physician as requiring treatment or would be obvious to a layperson. Citing, Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014)(citing Knight v. Wiseman, 590 F.3d 458, 463 (7th Cir. 2009)). Plaintiff's ear infection was ultimately diagnosed by a prison nurse, prison doctor, and two specialists. The delay in diagnoses and treatment caused Plaintiff to suffer months of unnecessary pain and hearing loss. See Zemmeyer v. Kendall County, 220 F.3d 805, 810 (7th Cir. 2000) (an ear infection, though a 'common malady,' could be deemed objectively serious where it 'inflicted prolonged suffering' and required extensive treatment). See also, Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997)(condition is objectively serious if the 'failure to treat it could result in further significant injury or unnecessary and wanton infliction of pain'). The ear infection described by Plaintiff is sufficiently serious to support an Eighth Amendment claim at screening.")

19. Prevailing on the subjective prong requires a prisoner to show that a prison official has subjective knowledge of-and then disregards-an excessive risk to inmate health. Id. at 653. The Plaintiff need not show the individual "literally ignored" his complaint, but that the individual was aware of the condition and either knowingly or recklessly disregarded it. Hayes v. Snyder, 546 F.3d 516, 524 (7th Cir. 2008). "Something more than negligence or even malpractice is required" to prove deliberate indifference. Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014); see also Hammond v. Rector, 123 F.Supp. 3d 1076, 1086 (S.D. Ill. 2015) ("isolated occurrences of deficient medical

treatment are generally insufficient to establish ... deliberate indifference"). Deliberate indifference involves "intentional or reckless conduct, not mere negligence." Berry v. Peterman, 604 F.3d 435, 440 (7th Cir. 2010)(citing Gayton v. McCoy, 593 F.3d 610, 620 (7th Cir. 2010).

20. Other Courts have held: The failure to follow professional standards, or even prison medical care protocols can be evidence of the practitioner's knowledge of the risk posed by particular synptoms or conditions; see Mata v. Saiz, 427 F.3d 745, 757-58 (10th Cir. 2005); accord, Phillips v. Rome County, Tenn, 534 F.3d 531, 541, 543-44 (6th Cir. 2008); (holding: failure to inquire into, and treat, Plaintiff's severe pain, and repeated delays in doctor's seeing the patient, could be deliberate indifference). Mckenna v. Wright, 386 F.3d 432, 437 (2d Cir. 2004); (allegations of repeated failures to test for Hepatitis C despite the presence of known "danger signs" supported a deliberate indifference claim.); Miltier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990) (doctor failed to perform test for cardiac disease in patient with symptoms that called for them); Hudak v. Miller, 28 F.Supp. 2d 827, 831 (S.D.N.Y. 1998); (failure to order CT scan for nine months for prisoner complaining of chronic headaches); Medcalf v. State of Kansas, 626 F.Supp. 1179, 1183 (D.Kan. 1986); (doctor failed to order test that were suggested by "the elemental and classic symptoms of a brain tumor"); Weaver v. Jarvis, 611 F.Supp. 40, 44 (N.D. Ga. 1985); (prison doctor refused to conduct diagnostic test on a prisoner with symptoms of optic disease leading to blindness); Rosen v. Chang, 811 F.Supp. 754, 760-61 (D.R.I. 1993); ("Grossly incompetent and reckless inadequate examination by licensed physician" may constitute deliberate indifference).

21. Plaintiff raises, that he told Dr.Trusewych, that it was pain in his left ear, and that it felt like it could be an infection, but just going off what Dr.Trusewych wrote in his medical reports, the fact that Plaintiff complained of pain in his left ear alone, should have made Dr.Trusewych aware that it could have been an ear infection.

("The trier of fact can conclude that the professional knew of the need from evidence that it was obvious and, further, it can be assumed that 'what might not be obvious to a layperson might be obvious to a

professional acting within his or her area of expertise.'"); see Chavez v. Cady, 207 F.3d 901, 905 (7th Cir. 2000). ("A medical condition is objectively serious if a physician has diagnosed it as requiring treatment, or the need for treatment would be obvious to a layperson.") Hammond v. Rector, 123 F.Supp. 3d 1076, 1084 (S.D. Ill. 2015)(citing Pyles v. Fahim, 771 F.3d 403, 409 (7th Cir. 2014).

22. Plaintiff raises, the fact that Dr.Trusewych based his TMJ diagnoses solely on a guess, (and for a year of Plaintiff complaining and informing Dr.Trusewych that the pain was getting worse); Dr. Trusewych's failure to order lab test to try an detect infection, or x-rays to try an confirm his TMJ diagnoses, was absolutely reckless, and a disregard for a serious medical need. ("The Plaintiff need not show the individual 'literally ignored' his complaint, but that the individual was aware of the condition and either knowingly or recklessly disregarded it. Hayes v. Snyder, 546 F.3d 516, 524 (7th Cir. 2008).

23. Moreover, during a trial there's a strong probability that an expert would tesify that the symptoms Plaintiff complained of having, (pain in left ear, headaches, numbing and tingling left side of face), are associated with other serious medical conditions; such as ear infections and brain tumors, etc. Also see, Hudak v. Miller, 28 F.Supp. 2d 827, 831 (S.D.N.Y. 1998)(failure to order CT scan for nine months for prisoner complaining of chronic headaches, supported deliberate indifference).

24. Also, ("the contemporary standards and opinions of the medical profession are highly relevant in determining what constitutes deliberate indifference"); and that the District Court did not have the expertise to render a professional, knowledgeable, and fair opinion, as to whether or not Dr.Trusewych's failure to order lab test and/or x-rays under the set of circumstances in this case, was a departure from professional standards. ("it is clearly established that medical treatment may so deviate from the applicable standard of care as to evidence deliberate indifference; and conflicting expert opinions may create a factual question as to deliberate indifference"); Moore v. Duffy, 255 F.3d 543, 545 (8th Cir. 2001).

25. Plaintiff avers, that the District Court erred when it granted Defendants motion for summary judgment, (without factoring in an expert's opinion); and that under the circumstances in this case, Plaintiff should have been permitted to prove (where there's evidence to support), that Dr.Trusewych's treatment "so deviated from professional standards that it amounted to deliberate indifference." See Smith v. Jenkins, 919 F.2d 90, 93 (8th Cir. 1990).

DID THE U.S. APPELLATE COURT, FOR THE SEVENTH CIRCUIT ERR, WHEN THE COURT AFFIRMED THE U.S. DISTRICT COURT'S JUDGMENT AND DENIED PLAINTIFF'S MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS, HOLDING THAT PLAINTIFF HAD NOT IDENTIFIED A GOOD FAITH ISSUE.

26. In the Appellate Court's order, the Court held: (that the motion for leave to proceed in forma pauperis on appeal is denied. See Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000). The appellant has not identified a good faith issue that the district court erred in granting summary judgment for the defendants. The appellant shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b). See Newlin v. Helman, 123 F.3d 429, 434 (7th Cir. 1997).

Plaintiff filed a motion for rehearing, and on May 6, 2024, that motion was denied. The Appellate Court gave Plaintiff some time to pay the docketing fee, and on July 26, 2024, the Appellate Court dismissed the appeal, for Plaintiff's failure to pay the required docketing fee pursuant to Circuit Rule 3(b). See App. No. 1, exh. F.

27. Where leave to proceed in forma pauperis is originally granted by trial court, in forma pauperis appeal can follow as matter of course, unless District Court certifies that appeal is not taken in good faith or that party is not otherwise entitled to proceed, pursuant to Federal Rules of Appellate Procedure, Rule 24 (a). Remmers v. Brewer, 316 F.Supp. 145, 1975 U.S. Dist. LEXIS 11914 (S.D. Iowa 1975), remanded, 529 F.2d 656, 1976 U.S. App. LEXIS 12877 (8th Cir. 1976).

Lack of "good faith" for purposes of rule 24(a), Federal Rules of Appellate Procedure, and 28 USCS § 1915 (a), is not shown by mere

fact that appeal lacks merit, but rather by fact that issues raised are so frivolous that appeal would be dismissed in case of non-indigent litigant. Brown v. Booker, 622 F.Supp. 993, 1985 U.S. Dist. LEXIS 13424 (E.D. Va. 1985), dismissed without op. 790 F.2d 83, 1986 U.S. App. LEXIS 18905 (4th Cir. 1986).

28. Plaintiff raises, that "as to the facts in the case, there's no dispute between Plaintiff and Defendants." Here, the only question is whether or not Dr.Trusewych "recklessly disregarded a serious medical condition; in which Plaintiff avers, that Dr.Trusewych basing his diagnoses solely on a guess, and not ordering any medical test, for a year, despite of Plaintiff's continuous complaints that the headaches and ear pain was getting worse, was absolutely a reckless disregard to a serious medical condition; that ultimately caused Plaintiff to suffer unnecessary pain, vertigo, and permanant left ear hearing loss; and from the facts and evidence in the case a reasonable jury could find deliberate indifference.

29. Plaintiff raises, that other courts in similar cases, have held: (Whether an instance of medical misdiagnosis resulted from deliberate indifference or negligence is a factual question requiring exploration by expert witnesses.

In Roger v. Evans, 792 F.2d at 1058; the court explained: "that courts don't get into disputes over medical judgments - and offten it is. Courts sometimes seem willing to blur this line in extreme cases which involve not just bad care, but also very serious medical conditions. Often leading to death, disability, or disfigurement. See Greeno v. Daley, 414 F.3d 645, 655 (7th Cir. 2005) (painful gastric condition that persisted for years as treatment was denied); Parham v. Johnson, 126 F.3d 454, 457-58 n.7 (3d Cir. 1997) (ear injury resulting in severe hearing loss after maltreatment); Wood v. Sunn, 865 F.2d 982, 989-90 (9th Cir. 1988) (disregard of complaints because doctors "assumed" the prisoner's pain was psychological; he lost the ability to urinate).

30. Moreover, Greeno v. Delay, 414 F.3d 645, 655 (7th Cir. 2005); White v. Napolean, 897 F.2d 103, 109 (3d Cir. 1990); and Ruffin v. Deperio, 97 F.Supp. 2d 346, 353 (W.D.N.Y. 2000); (holding jury could find that treatment "consisted of little more than documenting [Plaintiff's] worsening condition' and continuing ineffective treatment, notwithstanding frequent examinations and eventual referral to specialist).

31. Plaintiff asserts, that given the facts and uncontested evidence in this case, along with the supporting case law (including 7th circuit Appellate Court rulings), cited herein; that Plaintiff has shown that the issue[s] raised are not frivolous, and was filed in good faith, for purposes of Rule 24 (a), Federal Rules of Appellate Procedure, and 28 USCS § 1915 (a), it is not shown by mere fact that appeal lacked merit, or was frivolous; and Plaintiff should have been permitted to proceed in forma pauperis on appeal.

CAUSES OF ACTION

Plaintiff made complaints about pain in his left ear, headaches, and tingling and numbing on the left side of his face, for a year; that the nurses, and specifically Dr.Trusewych, employees of Wexford Health Sources, failed to suggest, order, or run any medical test and/or x-rays, to try an make a positive diagnosis; which lead to Plaintiff suffering unnecessary pain, vertigo, and permanant left ear hearing loss.

RELIEF REQUESTED

That the U.S. District Court for the Central District of Illinois ruling granting the Defendants motion for summary judgment, be reversed, and that the case be remanded for trial. That the U.S. Appellate Court for the 7th Circuit ruling be reversed and Plaintiff be allowed to proceed in forma pauperis on appeal. Or that Defendants be subjected to punitive damages, and that Plaintiff should be awarded monetary relief, for the unnecessary pain, and permanant left ear

hearing loss Plaintiff suffers; and/or any other relief the Court finds appropriate.

Respectfully Submitted,

Willie Orr

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Willie Orr

Date: 10/22/2024