PETITIONER WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PRO-SE DEMAJIO JEROME ELLIS V. LINDA CARPER, et al.

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United States Courthouse
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FINAL JUDGMENT

September 23, 2024

Before
FRANK H. EASTERBROOK, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1755	DEMAJIO J. ELLIS, Plaintiff - Appellant v. LINDA CARPER, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:21-cv-02383-JMS-CSW Southern District of Indiana, Indianapolis Division District Judge Jane Magnus-Stinson	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

APPENDIX A
PAGE 1 OF 6

PRO-SE DEMAJIO JEROME ELLIS V. LINDA CARPER, ET AL
PETITIONER WRIT OF CERTIORARI

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 20, 2024*
Decided September 23, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1755

APPENDIX A PAGE 2 OF 6

DEMAJIO J. ELLIS,
Plaintiff-Appellant,

v.

LINDA CARPER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:21-cv-02383-JMS-CSW

Jane Magnus-Stinson,
Judge.

ORDER

Demajio Ellis, an Indiana prisoner, sued more than two dozen healthcare providers and correctional officers at Pendleton Correctional Facility. He claimed that they were deliberately indifferent to his medical needs and that one correctional officer used excessive force, all in violation of the Eighth Amendment. *See* 42 U.S.C. § 1983. The

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

district court entered summary judgment for the defendants, concluding that Ellis lacked evidence that he suffered from a serious medical condition and that, even if he had one, the defendants did not consciously disregard a need for treatment. The court also ruled that the correctional officer did not use excessive force. We affirm.

Because this is an appeal from a summary-judgment decision, we recount the facts in the light most favorable to Ellis and draw reasonable inferences in his favor. *See Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 457 (7th Cir. 2020). Sometime before September 2019, Ellis was diagnosed with asthma, for which he had regular "chronic care" appointments and was prescribed an inhaler. Ellis had one bout of bronchitis during the relevant time period, but medical records show that his doctor believed that his asthma was well controlled. Ellis also believed that he had a heart condition that necessitated testing and treatment.

On 20 occasions between September 2019 and May 2020, Ellis sought treatment (at sick call, through health-services requests, or during the nurses' medication rounds) for symptoms including chest pain, shortness of breath, irregular heartbeat, wheezing, lightheadedness, and dizziness; he also asserted several times that he had passed out in his cell. No one ever witnessed Ellis's reported episodes of respiratory or cardiac distress, or any loss of consciousness. Ellis was never in medical distress when a nurse or doctor assessed him, and his vital signs were always within normal range, apart from a slightly elevated heart rate on one occasion. He received numerous physical examinations and diagnostic tests including electrocardiograms and chest x-rays. None revealed any cardiac or respiratory abnormality, other than the asthma. Still, Ellis wished to be admitted to the prison infirmary or hospitalized, and he lived in constant fear of dying. At one point, a nurse referred Ellis for a mental-health evaluation, suspecting that obsessive thoughts were responsible for his repeated medical complaints. Records show that Ellis experienced delusional thinking.

In April 2020, a correctional officer, Joshua Creel, handcuffed Ellis while escorting him to the medical unit. After Ellis stated that the handcuffs were too tight, Creel responded that Ellis could not go to the medical unit without restraints and did not adjust the handcuffs. Ellis remained handcuffed for approximately 40 minutes during his medical appointment. Afterward, he submitted an emergency healthcare request, stating that the handcuffs had caused blackish rashes on his wrists. In response, a member of the medical staff advised Ellis to apply lotion to the affected area.

In a series of federal complaints filed in late 2021, Ellis sued a total of 28 correctional officers (state employees) and healthcare providers (employees of Wexford of Indiana, LLC); the district court later consolidated these suits into a single case. Ellis alleged that the defendants ignored his need for treatment or provided inadequate care for his serious medical conditions, in violation of the Eighth Amendment. He also alleged that Creel had used excessive force by handcuffing him too tightly.

The defendants, in two groups, eventually moved for summary judgment. With respect to the deliberate-indifference claims, the district court first ruled that Ellis lacked evidence of any objectively serious medical condition. Regardless, the court added, no reasonable factfinder could infer deliberate indifference because the medical staff had responded attentively to his complaints. And Ellis's excessive-force claim failed because Creel had a security rationale for handcuffing Ellis, whose injury was minor at most. Finally, the court ordered Ellis to show cause why it should not also enter judgment in favor of two nurses who had not appeared: Kristin White (who never answered the complaint) and Jamie Bailey (who was never served with process). Ellis failed to do so—instead asking for a hearing on his requests for default judgments against the nurses—and the district court later entered judgment in their favor.

On appeal, Ellis first challenges the decision on his deliberate-indifference claim. He maintains that the medical staff provided ineffective treatment for his chest pain and breathing problems. But we agree with the district court that Ellis's claim does not withstand summary judgment.

First, Ellis lacks evidence that his medical condition is objectively "sufficiently serious," *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); in other words, that his condition "has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Williams v. Rodriguez*, 509 F.3d 392, 401 (7th Cir. 2007) (citation omitted). Asthma can be a serious medical condition depending on the severity of the attacks. *Id.* (quoting *Board v. Farnham*, 394 F.3d 469, 484 (7th Cir. 2005)). But here there is no medical evidence that severe asthma attacks caused Ellis's reported symptoms. Ellis used a preventative inhaler, his doctor concluded that his asthma was well-controlled, and his blood oxygen and lung function were consistently normal. And for his complaints of chest pain and related symptoms, Ellis underwent numerous physical examinations and diagnostic testing; none revealed signs of serious medical problems. Ellis's subjective belief as a layperson that he has underlying conditions cannot create a genuine issue of material fact. *Williams*, 509 F.3d at 402.

APPENDIX A
PAGE 4 OF 6

APPENDIX A

Even if Ellis had an objectively serious medical condition requiring treatment, he did not present evidence that any medical staffer acted with deliberate indifference to his reported symptoms. When medical professionals provide some level of care to a prisoner, we defer to their medical judgment "unless no minimally competent professional would have so responded under those circumstances." *Lockett v. Bonson*, 937 F.3d 1016, 1023 (7th Cir. 2019) (cleaned up). Here, nothing in the record suggests that the medical staff failed to exercise medical judgment in responding to Ellis's complaints. To the contrary, Ellis received continuous medical care in the form of physical examinations, diagnostic testing, and prescription medication. *See id.* at 1025. Ellis believes that he required treatment at a hospital or a prescription for nitroglycerine, but prisoners do not have a constitutional right to specific medical treatment. *See Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 965 (7th Cir. 2019).

As for Ellis's claim about painful handcuffing, no reasonable factfinder could find that Creel used excessive force against Ellis. The Eighth Amendment prohibits "unnecessary and wanton infliction of pain" on prisoners. *Hudson v. McMillian*, 503 U.S. 1, 5 (1992). For excessive-force claims under the Eighth Amendment, we ask whether the "force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* at 7. Here, there is no evidence that the handcuffing was anything more than a good-faith application of force for the purpose of maintaining order and complying with the prison's policies. And even in the Fourth Amendment context (with its lower reasonableness standard), we have required a plaintiff claiming excessive force based on handcuffing to have put the officer on notice of the degree of pain or injury being inflicted by the handcuffs, not simply to mention their tightness. *See Rooni v. Biser*, 742 F.3d 737, 742 (7th Cir. 2014) (collecting examples). Here, Ellis lodged a general complaint; there is no evidence about pain, just superficial marks on the wrist. Therefore, a reasonable jury could not conclude that Creel tightly handcuffed him maliciously and sadistically for the very purpose of causing harm. *See Outlaw v. Newkirk*, 259 F.3d 833, 840 (7th Cir. 2001).

Finally, Ellis argues that the district court erred by entering judgment for the nurses who did not appear. But its decision was proper—or, at least not prejudicial to Ellis in the case of Bailey, who was never served and need not have been included in the judgment. (Leaving her out would not have affected finality because it was too late to serve her, and a new claim against her would be untimely. *See Manley v. City of Chicago*, 236 F.3d 392, 395 (7th Cir. 2001).) After the clerk's entry of default against White, Ellis missed the court's deadline for proving damages and obtaining a judgment under Rule 55(b)(2). Thus he did not "establish his entitlement to the relief he seeks." *VLM Food Trading Int'l, Inc. v. Ill. Trading Co.*, 811 F.3d 247, 255 (7th Cir. 2016) (citation omitted).

Because he never proved the substantial damages requested, the district court properly entered judgment for White—even though her default meant that the factual allegations against her were deemed admitted, *see Barwin v. Vill. of Oak Park*, 54 F.4th 443, 450 n.6 (7th Cir. 2022), which in this case would preclude a judgment for her on the merits.

AFFIRMED

PRO-SE DEMAJIO JEROME ELLIS

V.

LINDA CARPER, et al

APPENDIX A

PAGE 6 OF 6

PETITIONER WRIT OF CERTIORARI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

24-1754

PLAINTIFF APPELLANT APPENDIX DEMAJIO J. ELLIS V. NURSE MS. JAMIE BAILEY, ET AL

DEMAJIO J. ELLIS,

Plaintiff,

v.

JAMIE BAILEY Nurse, et al.,

Defendants.

No. 1:21-cv-02383-JMS-CSW

Order Denying Motion for Reconsideration, Motion to Set Hearing, and Motion for Default Judgment, and Directing Entry of Final Judgment

In this civil rights lawsuit, plaintiff Demajio Ellis sued over two dozen correctional and medical employees for being deliberately indifferent to his serious medical needs between September 2019 and May 2020 when he was incarcerated at Pendleton Correctional Facility ("Pendleton"). Mr. Ellis alleged that the Defendants denied or delayed his access to medical care when he suffered from shortness of breath, irregular heartbeat, loss of consciousness, and chest pain. He also alleged that one of the Correctional Defendants used excessive force against him while escorting him to the medical unit. APPENDIX B

On February 9, 2024, the Court granted summary judgment in favor of Defendants. Dkt. 185. Medical Defendants Nurse White and Nurse Bailey did not answer the complaint. The Court provided Mr. Ellis through March 6, 2024, to show cause why summary judgment should not be granted in their favor pursuant to Federal Rule of Civil Procedure 56(f)(1). *Id.* at 21–22.

Mr. Ellis has filed a motion to set hearing, dkt. [186], motion for default judgment, dkt. [189], and motion for reconsideration of the Court's ruling on the summary judgment order, dkt. [191]. For the following reasons, these motions are **denied** and final judgment shall issue.

VOLUME 4

PAGE 28 OF 36

24-1754 PETITIONER WRIT OF CERTIORARI

PLAINTIFF APPELLANT APPENDIX DEMARIO J. ELLIS V. NURSE MS. JAMIE BAILEY, CASE

I. Motion to Reconsider

No judgment has issued yet in this action, which makes the Court's Order granting summary judgment an interlocutory order. The Court may reconsider interlocutory orders at any time before final judgment under Federal Rule of Civil Procedure 54(b). *Terry v. Spencer*, 888 F.3d 890, 893 (7th Cir. 2018); *see also Galvan v. Norberg*, 678 F.3d 581, 587 n.3 (7th Cir. 2012) ("Rule 54(b) governs non-final orders and permits revision at any time prior to the entry of judgment, thereby bestowing sweeping authority upon the district court to reconsider....").

A motion to reconsider under Rule 54(b) may be appropriate where there has been "a significant change in the law or facts since the parties presented the issue to the court[.]" *United States v. Ligas*, 549 F.3d 497, 501 (7th Cir. 2008). However, "[m]otions to reconsider 'are not replays of the main event.'" *Dominguez v. Lynch*, 612 F. App'x 388, 390 (7th Cir. 2015) (quoting *Khan v. Holder*, 766 F.3d 689, 696 (7th Cir. 2014)). A motion to reconsider "is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269–70 (7th Cir. 1996). Thus, "[t]o support a motion for reconsideration based on newly discovered evidence, the moving party must show not only that this evidence was newly discovered . . . , but also that it could not with reasonable diligence have discovered and produced such evidence during the pendency of the motion." *Id.* at 1269 (cleaned up). APPENDIX B

Mr. Ellis argues in his motion that the Court improperly weighed the parties' credibility. Dkt. 191 at 1–4. Mr. Ellis argues that his prescribed inhalers' side effects may have caused his dizziness, chest pain, fast heart rate, and shortness of breath, and that therefore he created "genuine issues of [his] suffering for a jury trial." *Id.* at 4 (citing dkt. 165-1 at 7, ¶ 3). He also argues that he was diagnosed with a heart condition in 2023 by a doctor at Correctional Industrial Facility, and

VOLUME 4 PAGE 29 OF 36

PETITIONER WRIT OF CERTIORARI
24-1754 DEMARIO J. ELLIS V. NURSE MS. JAMIE BAILEY, ET AL.
PLAINTIFF APPELLANT APPENDIX

that he has asthma, high blood pressure, and hypertension. *Id.* at 4. He argues that even without a diagnosed heart condition, the delay in treatment for his chest pains creates a material dispute of fact because Defendant never provided him "a nitro or nothing for his pain." *Id.* at 5.

Mr. Ellis is merely rehashing the arguments that he made in response to Defendants' summary judgment motions. As the Court explained in its Order granting summary judgment, Mr. Ellis was medically assessed after each medical episode, and no medical professional was ever able to find evidence of a serious health condition. Dkt. 185 at 16–18. His medical records also indicated that his asthma was well-controlled. *Id.* at 18. Thus, Mr. Ellis had provided no medical evidence that he suffered from a serious medical condition, and his self-diagnosis was insufficient to create a dispute of fact. *Id.* at 17 (citing *Jackson v. Anderson*, 770 F. App'x 291, 293 (7th Cir. 2019)). In the alternative, the Court found that Defendants responded reasonably because they consistently assessed Mr. Ellis when he complained of chest pains and breathing issues and provided him medication for his asthma and diagnostic testing. *Id.* at 19. Additionally, Mr. Ellis' health condition in 2023 is irrelevant to Defendants' actions between September 2019 and May 2020.

APPENDIX B

Mr. Ellis failed to identify any new law or fact that would cause the Court to reconsider its ruling. Accordingly, his motion to reconsider, dkt. [191], is **denied**.

II. Motion to Set Hearing and Motion for Default Judgment

Ms. White was served by certified mail in January 2023, and the clerk entered default against her on August 10, 2023. Dkt. 176. Mr. Ellis had through September 8, 2023, to provide evidence of damages against her, but he did not do so.

Mr. Ellis filed a motion to set hearing in which he asserted that he did not receive a copy of the Court's order that provided him the September 8 deadline to provide proof of damages.

VOLUME 4 PAGE 30 OF 36

24-1754 DEMARIO J. ELLIS V. NURSE MS. JAMIE BAILEY, ET AL
PLAINTIFF APPELLANT APPENDIX

Dkts. 186, 188 at ¶ 1. Mr. Ellis also filed a motion for default judgment against Ms. White, in which he requests $1 million in damages. Dkt. 189.

The Court has determined that Ms. White is entitled to summary judgment for the same reasons the other Defendants are—there's no evidence that Mr. Ellis suffered from a serious health condition, and, even if he did, Defendants responded reasonably. Mr. Ellis has produced no evidence about Ms. White's involvement that would cause the Court to reconsider its grant of summary judgment in her favor under Federal Rule of Civil Procedure 56(f)(1). Accordingly, Mr. Ellis' motion for hearing, dkt. [186], and motion for default judgment, dkt. [189], are **denied.**

III. Conclusion

Mr. Ellis' motion to set hearing, dkt. [186], motion for default judgment, dkt. [189], and motion for reconsideration of the Court's ruling on the summary judgment order, dkt. [191], are **denied.** PETITIONER WRIT OF CERTIORARI

Mr. Ellis did not show cause as to why summary judgment should not be granted in Nurse White and Nurse Bailey's favor. Accordingly, consistent with this Court's February 18, 2022, Screening Order, dkt. [22], and February 8, 2024, Order Granting Defendants' Motions for Summary Judgment, dkt. [185], final judgment shall issue by separate order.

IT IS SO ORDERED. APPENDIX B

Date: 4/8/2024

Jane Magnus-Stinson

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

VOLUME 4 PAGE 31 OF 36

PETITIONER WRIT OF CERTIORARI

Distribution: 24-1754 DEMAJIO J. ELLIS V. NURSE MS. JAMIE BAILEY, et al
PLAINTIFF APPELLANT APPENDIX

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APPENDIX

B

VOLUME 4 PAGE 32 OF 36

PETITIONER WRIT OF CERTIORARI
FINAL JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

24-1754

PLAINTIFF APPELLANT APPENDIX

DEMAJIO J. ELLIS V. NURSE MS. JAMIE BAILEY, ET AL

DEMAJIO J. ELLIS,
Plaintiff,

v.

No. 1:21-cv-02383-JMS-CSW

CLARK Nurse Ms.,
~~JAMIE BAILEY Nurse,~~
KYLE MCKINNEY,
TERRA HOWARD,
JENIFFER STEELMON,
CHRISTOPHER COMMANDER,
SUZANNE DEEGAN,
JOSHUA LOCKE,
EHAP SHEHATA,
AMBER PLASTERER Nurse,
CRAIG GARY,
LESLIE JUAREZ,
JODI MURPHY,
STEPHEN FOSTER,
WAYNE JONES,
NURSE MS. BRITTNEY GROVES-MOORE,
BRIAN MARTZ,
LINDA CARPER,
VICTORIA VANNESS,
SERGEANT MR. HOLMES,
JOHN POOR,
SHAD PAINTER,
KELLY LOVEALL,
KRISTIN WHITE Clerk's Entry of Default Entered on 8/10/2023.,
KRISTINE PRYOR,
MARTIAL R. KNIESER,
CAPTAIN MR. BOWLING,
JOHNATHAN JACKSON,
TIFFANY MASON,
TIEA MADDEN,
JOSHUA CREEL,

Defendants.

APPENDIX B

VOLUME 5

PETITIONER WRIT OF CERTIORARI

24-1754 PLAINTIFF APPELLANT **FINAL JUDGMENT**

APPENDIX

DEMAJIO J. ELLIS V. NURSE MS. JAMIE BAILEY, ET AL

Final Judgment under Rule 58 of the Federal Rules of Civil Procedure is now entered in favor of Defendants and against Plaintiff on all claims.

This action is now closed.

Date: 4/8/2024

Jane Magnus-Stinson

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

APPENDIX B

Roger A.G. Sharpe, ~~Clerk~~ of Court

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VERIFICATION OF APPENDIX AUTHENTICITY

I, APPELLANT-PLAINTIFF DO HEREBY DECLARE, SWEAR, CERTIFY AND AFFIRM, UNDER THE PENALTY OF PERJURY, THAT ALL THE DOCUMENTS CONTAINED WITHIN THIS APPELLANT'S APPENDIX ARE TRUE, AUTHENTIC AND ACCURATE COPIES OF THE DOCUMENTS AS THEY WERE TRANSMITTED TO THE APPELLANT

DEMAJIO JEROME ELLIS
(SIGNATURE)
DEMAJIO JEROME ELLIS
(NAME, PRINTED)
APPELLANT-PLAINTIFF / PRO-SE
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MAY-9-2024

APPENDIX
B

THE GEO GROUP INC
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CERTIFICATE OF SERVICE

I, APPELLANT-PLAINTIFF DO Hereby CERTIFY THAT ON MAY-9-2024 UNDER THE PENALTY OF PERJURY I GAVE THIS TRUE AND CORRECT COPY OF APPELLANT APPENDIX IN SUPPORT OF ATTACHMENT WITH THE APPELLANT-PLAINTIFF BRIEF TO THE LAW CLERK TO BE COPIED. AND MAIL USING NEW CASTLE CORRECTIONAL FACILITY AND CERTIFIED LEGAL MAIL WITH U.S. SUFFICIENT PREPAID POSTAGE TO: THE CLERK AT UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT OFFICE OF THE CLERK, 219 S. DEARBORN STREET, ROOM 2722 CHICAGO ILLINOIS 60604; AND TO THE INDIANA ATTORNEY GENERAL OFFICE I.G.C.S. 5th Floor 302 W. WASHINGTON STREET INDIANAPOLIS, INDIANA, 46204

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APPENDIX B

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