MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Katherine A. Piscione
Ann Marie Waldron
Waldron Tate Bowen Spandau LLC
Indianapolis, Indiana

ATTORNEY FOR APPELLEES – WILLIAM SPANENBERG, M.D. AND WEXFORD OF INDIANA

Rachel D. Johnson
Stoll Keenon Ogden PLLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE – INDIANA DEPARTMENT OF CORRECTION

Theodore E. Rokita
Attorney General of Indiana

Benjamin M.L. Jones
Assistant Section Chief
Criminal Appeals
Indianapolis, Indiana

Joseph Slopsema,

Appellant-Petitioner,

v.

William J. Spanenberg, M.D., Indiana Department of Correction, Putnamville Correctional Facility, Wexford

April 13, 2023

Court of Appeals Case No. 22A-CT-2336

Appeal from the Marion Superior Court

The Honorable Timothy W. Oakes, Judge

Trial Court Cause No. 49D02-2003-CT-12545

Health Sources, Inc., and
Wexford of Indiana, LLC,
Appellee-Respondent.

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Joseph Slopsema appeals the trial court's grant of summary judgment in favor of William J. Spanenberg, M.D., Wexford Health Sources, Inc., and Wexford of Indiana, Inc. (collectively, the "Wexford Defendants"), and the trial court's separate grant of summary judgment in favor of the Indiana Department of Correction ("DOC") and the Putnamville Correctional Facility ("Prison") (collectively, the "State Defendants"). Slopsema raised claims that the Wexford Defendants and the State Defendants violated his rights under 42 U.S.C. § 1983 ("Section 1983"). On appeal, Slopsema argues that both summary judgment orders were erroneous because genuine issues of material fact exist regarding whether the Wexford Defendants and the State Defendants exhibited deliberate indifference toward Slopsema's serious medical needs. We disagree with Slopsema's contentions, and accordingly, we affirm.

Issues

[2] Slopsema raises two issues, which we restate as:

I. Whether the trial court properly granted summary judgment to the Wexford Defendants.

II. Whether the trial court properly granted summary judgment to the State Defendants

Facts

[3] Slopsema was an inmate in the DOC from 2015 through September 2019. Wexford was awarded a contract to provide medical services to inmates at Indiana's correctional facilities, including the Prison. Dr. Spanenberg was employed by Wexford and provided care at the Prison from 2016 through May 2018.

[4] On March 16, 2018, Slopsema had an appointment with Dr. Spanenberg. Slopsema informed Dr. Spanenberg that he was having bloating, constipation, and bloody bowel movements.[1] Dr. Spanenberg ordered laboratory testing and prescribed colace, a stool softener, and hemorrhoidal supplements.

[1] These issues were not mentioned during Slopsema's February 12, 2018 routine appointment with Dr. Spanenberg.

[5] On March 17, Slopsema saw a nurse and reported that he was having frequent bloody diarrhea. The nurse notified Dr. Spanenberg, who saw Slopsema again on March 21. Slopsema reported sharp perianal pain that was aggravated by bowel movements and bloody bowel movements. Dr. Spanenberg diagnosed Slopsema with hemorrhoids, ordered sitz baths, and prescribed colace, suppositories, and naproxen.

[6] Dr. Spanenberg saw Slopsema again on March 23. Dr. Spanenberg noted a "marginal improvement" in Slopsema's symptoms. Appellant's App. Vol. IV p. 54. Dr. Spanenberg repeated laboratory testing and continued with the same prescriptions. At this appointment, Slopsema weighed 195 pounds.

[7] Between March 23 and March 30, Slopsema had nurse visits twice daily for sitz baths. On April 5, Slopsema saw Dr. Spanenberg, who noted that Slopsema's symptoms were "improving" and ordered that the sitz baths be restarted and continued with the prescribed medications. *Id.* at 35. At this appointment, Slopsema weighed 178 pounds. Slopsema continued with nurse visits and twice-daily sitz baths from April 6 through April 8. On April 8, Slopsema reported to the nurse that he was "having a bad day." *Id.* at 28. The nurse noted that Slopsema was "grey in pallor" and referred him to see Dr. Spanenberg. *Id.*

[8] Dr. Spanenberg saw Slopsema again on April 9 and again diagnosed Slopsema with hemorrhoids. Dr. Spanenberg ordered a recheck of Slopsema's labs,

continued the sitz baths, and noted that Slopsema should see a general surgeon for "banding"[2] if the issue "persists" or he becomes "significantly anemic." *Id.* at 26. At an April 10th nurse visit, Slopsema reported significant pain. Slopsema saw Dr. Spanenberg again on April 11 because he was having ongoing bleeding six to eight times a day with bowel movements. Dr. Spanenberg referred Slopsema to see a specialist for treatment of the persistent internal hemorrhoidal bleeding. Dr. Spanenberg noted that Slopsema had "[f]ailed to respond to conservative treatment over the course of weeks." Appellant's App. Vol. III p. 244.

[9] Slopsema continued twice daily nurse visits and sitz baths from April 14 to April 21, and once daily nurse visits and sitz baths from April 22 to April 25. Slopsema saw the specialist, Dr. Francis Tapia, on April 26, who diagnosed Slopsema with hemorrhoids, ordered continued conservative treatments, and scheduled a colonoscopy.

[10] Slopsema continued with the daily nurse visits and sitz baths through May 8. At that time, Slopsema experienced more intense pain. Laboratory testing revealed that he had low hemoglobin levels. Dr. Spanenberg determined that they could not "further wait for the planned colonoscopy," and that Slopsema

---

[2] Dr. Spanenberg testified: "When someone has internal hemorrhoids, as [Slopsema] was known to have, and they failed conservative treatment, banding is a mechanical way to decompress the hemorrhoids so that they quit bleeding and quit having rectal pain and irritation." Appellant's App. Vol. II p. 98.

needed a "transfusion, CT scan and the colonoscopy in rapid sequence." *Id.* at 192. Dr. Spanenberg sent Slopsema to the emergency room of a local hospital, where a CT scan showed "diffused colitis." Appellant's App. Vol. II p. 99. In the emergency room, Slopsema was prescribed an antibiotic typically used for bacterial diarrhea and was returned to the Prison on the same day.

[11] Dr. Spanenberg disagreed with the diagnosis given in the emergency room and suspected that Slopsema had ulcerative colitis and possibly "C. difficile colitis," which is a "bacterial infection" that can cause diffused colitis and "a number of serious consequences." *Id.* at 100. People in nursing homes, prisons, and hospitals are at increased risk for contracting C. difficile. Dr. Spanenberg prescribed steroids for the ulcerative colitis and Flagyl, which is the "appropriate treatment" for C. difficile. *Id.* The colonoscopy was already scheduled for the following week.

[12] On May 10, Slopsema reported a "dramatic improvement in symptoms since the initiation of steroids." Appellant's App. Vol. III p. 184. On May 11, however, Slopsema's blood sample was hand delivered to the hospital so that Dr. Spanenberg could have immediate results. The laboratory testing of Slopsema's blood revealed a "critical [hemoglobin count] of 6.6." *Id.* at 178. Slopsema was then transported to Methodist Hospital in Indianapolis, where he was admitted. Slopsema tested positive for C. difficile, received medications, and received blood transfusions. When Slopsema was discharged from Methodist Hospital, he was sent to the Plainfield Correctional Facility. On

June 8, Slopsema was again admitted to Methodist Hospital, where his colon was removed. He weighed 135 pounds when discharged from Methodist Hospital after his surgeries. Slopsema was then returned to the Plainfield Correctional Facility.

[13] On August 24, 2018, Slopsema filed a tort claim notice alleging that the two-month delay in his diagnosis resulted in the removal of his colon. In March 2020, Slopsema filed a complaint against the Wexford Defendants and the State Defendants, which was amended in September 2020. The amended complaint alleged: (1) the medical care and treatment provided to Slopsema was "careless, negligent and failed to comply with appropriate standards of medical care and treatment required and/or expected of physicians and healthcare providers in the State of Indiana"; and (2) "[t]he actions of the Defendants violated Slopsema's rights under 42 U.S.C. § 1983 and constituted deliberate indifference." Appellees' App. Vol. II pp. 81-82.

[14] In May 2022, the Wexford Defendants filed a motion for summary judgment. The Wexford Defendants argued: (1) Slopsema's claim against the Wexford Defendants for medical malpractice failed because Slopsema had failed to present the necessary expert testimony; (2) Slopsema's claim against Dr. Spanenberg for deliberate indifference failed because Slopsema "failed to present evidence to even establish negligence, and therefore cannot even approach a claim under Section 1983 for deliberate indifference"; and (3) Slopsema's claim against Wexford under Section 1983 required Slopsema to

demonstrate that Wexford had "an unconstitutional policy that was the 'direct cause' or the 'moving force' behind a constitutional injury," which Slopsema had failed to do. Appellant's App. Vol. II pp. 47-48. The Wexford Defendants designated Slopsema's deposition, Dr. Spanenberg's deposition, and the report of an expert witness, Dr. Bradford Bomba. Dr. Bomba opined:

> [T]he focus of my review was specifically upon the care and treatment provided by Dr. Spanenberg and the medical staff during March, April, and May 2018. It is my professional medical opinion, to a reasonable degree of medical certainty, that care and treatment provided by Dr. Spanenberg and other medical staff at the Putnamville Correctional Facility was appropriate and within the applicable standard of care. Mr. Slopsema initially had reports of rectal bleeding which were treated appropriately with conservative measures. Mr. Slopsema reported some intermittent improvement. When his symptoms persisted, Dr. Spanenberg appropriately referred Mr. Slopsema offsite to see a specialist, and I agree with the recommendations of Dr. Tapia to perform a colonoscopy. It is most likely Dr. Tapia recommended this colonoscopy because of concerns of potential ulcerative colitis, and a colonoscopy is the appropriate diagnostic tool to diagnose ulcerative colitis. Unfortunately, before this colonoscopy could be scheduled and completed, the Plaintiff[']s condition deteriorated, and he was referred on multiple occasions to an offsite hospital for emergent care. While the ultimate circumstances of his medical treatment, and the eventual hospitalizations and surgeries, are unfortunate, it is my opinion that they are not based upon any deviation from the applicable standard of care, and that instead, proper steps were taken, and Mr. Slopsema received appropriate care at the Putnamville Correctional Facility.

Id. at 124.

[15] Slopsema filed a response to the Wexford Defendants' motion for summary judgment and alleged that: (1) he began complaining of bleeding in late February or early March 2018; (2) he was diagnosed with hemorrhoids without testing to confirm the diagnosis; (3) in late March, staff requested a colonoscopy; (4) by April 19, he had lost thirty-five pounds and had still not received a colonoscopy; (5) he was sent to the hospital and received a diagnosis of colitis; and (6) at the Prison, he was given no treatment for colitis and was returned to the general population. Slopsema alleged that Prison officials and Wexford had to approve certain treatments and some treatments ordered by Dr. Spanenberg were not approved. He alleged that he was prevented from seeing Dr. Spanenberg and that "it was useless to request medical assistance because the requests were often ignored." Appellant's App. Vol. III pp. 62-63. Accordingly, Slopsema argued that there is a genuine issue of material fact as to whether the Wexford Defendants acted with deliberate indifference when treating Slopsema. Slopsema made no argument regarding a claim for medical malpractice.

[16] In June 2022, the State Defendants filed a motion for summary judgment. The State Defendants alleged, in part, that the State Defendants are "not persons under 42 U.S.C. § 1983 and are immune from the federal claims." *Id.* at 48. The State Defendants also alleged that the "state tort negligence and medical negligence claim[s] are barred by the Indiana Tort Claims Act [ ] and thus [the

State Defendants] are immune from suit." *Id.* Slopsema filed a response and argued, in part, that genuine issues of material fact existed regarding whether the State Defendants were liable under a deliberate indifference standard.

[17] After a hearing regarding both motions for summary judgment, the trial court granted both motions. Slopsema now appeals.

Discussion and Decision

[18] "'When this Court reviews a grant or denial of a motion for summary judgment, we stand in the shoes of the trial court.'" *Minser v. DeKalb Cnty. Plan Comm'n*, 170 N.E.3d 1093, 1098 (Ind. Ct. App. 2021) (quoting *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020)). "Summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id*. (quoting *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 452 (Ind. 2019)); *see also* Ind. Trial Rule 56(C).

[19] The summary judgment movant invokes the burden of making a *prima facie* showing that there is no issue of material fact and that it is entitled to judgment as a matter of law. *Burton*, 140 N.E.3d at 851. The burden shifts to the non-moving party which must then show the existence of a genuine issue of material fact. *Id*. On appellate review, we resolve "[a]ny doubt as to any facts or inferences to be drawn therefrom . . . in favor of the non-moving party." *Id*.

[20] We review the trial court's ruling on a motion for summary judgment de novo, and we take "care to ensure that no party is denied his day in court." *Schoettmer v. Wright*, 992 N.E.2d 702, 706 (Ind. 2013). "We limit our review to the materials designated at the trial level." *Gunderson v. State, Ind. Dep't of Nat. Res.*, 90 N.E.3d 1171, 1175 (Ind. 2018), *cert. denied*.

[21] Slopsema's claims are premised on 42 U.S.C. § 1983,[3] which provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

[22] "Section 1983 creates no substantive rights of its own but was 'designed to prevent the states from violating the [C]onstitution . . . and to compensate injured plaintiffs for deprivations of those federal rights.'" *Melton v. Ind. Athletic*

---

[3] Slopsema's complaint seemed to also allege medical malpractice, and the trial court granted summary judgment. On appeal, Slopsema raises no specific argument regarding his medical malpractice claims and has waived the issue. Waiver notwithstanding, we note that, in medical malpractice claims, it is well settled that a plaintiff's failure to present expert testimony in response to a defendant's motion for summary judgment that designates such expert testimony will result in summary judgment being awarded to the defendant. *See, e.g, Korakis v. Mem'l Hosp. of S. Bend,* 198 N.E.3d 415, 420 (Ind. Ct. App. 2022). The Wexford Defendants designated Dr. Bomba's expert report to demonstrate that medical malpractice did not exist. In response, Slopsema presented no expert witness testimony to establish a genuine issue of material fact, and the trial court properly granted summary judgment on this claim.

Trainers Bd., 156 N.E.3d 633, 649 (Ind. Ct. App. 2020) (quoting *Culver-Union Twp. Ambulance Serv. v. Steindler*, 629 N.E.2d 1231, 1233 (Ind. 1994)), *trans. denied*. "To prevail on a Section 1983 claim, 'the plaintiff must show that (1) the defendant deprived the plaintiff of a right secured by the Constitution and laws of the United States, and (2) the defendant acted under the color of state law.'" *Id*. (quoting *Myers v. Coats*, 966 N.E.2d 652, 657 (Ind. Ct. App. 2012)).

[23] Slopsema contends that the defendants were "deliberately indifferent" to Slopsema's serious medical needs, which constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. To establish an Eighth Amendment violation based on deficient medical care, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976).

[24] The first requirement, a serious medical condition, is one "that 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." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). Slopsema contends that he had a serious medical condition, and none of the defendants contest this assertion.

[25] The second requirement, deliberate indifference, "does not require a showing that the prison officials acted 'maliciously and sadistically for the very purpose

of causing harm.'" *Williams v. Ind. Dep't of Correction*, 142 N.E.3d 986, 1001 (Ind. Ct. App. 2020), *on reh'g* (Apr. 8, 2020) (quoting *Wilson v. Seiter*, 501 U.S. 294, 305, 111 S. Ct. 2321, 2328 (1991)). Although deliberate indifference requires showing more than "mere negligence," it "does not require a plaintiff to show that he was 'literally ignored' by prison medical staff." *Id.* (quoting *Hayes v. Snyder*, 546 F.3d 516, 524 (7th Cir. 2008)). Deliberate indifference "is 'the equivalent of recklessly disregarding' a 'substantial risk of serious harm to a prisoner.'" *Id.* at 1001-02 (quoting *Farmer v. Brennan*, 511 U.S. 825, 836, 114 S. Ct. 1970, 1978 (1994)).

[26] The prisoner "'must show only that the defendants' responses to [his serious medical conditions] were so plainly inappropriate as to permit the inference that the defendants intentionally or recklessly disregarded his needs.'" *Id.* at 1002 (quoting *Hayes*, 546 F.3d at 524). "Conversely, a prison official may avoid liability under the deliberate-indifference standard if he can show that he 'responded reasonably to the risk, even if the harm ultimately was not averted.'" *Id.* (quoting *Farmer*, 511 U.S. at 844, 114 S. Ct. at 1982-83). "'A delay in treating non-life-threatening but painful conditions may constitute deliberate indifference if the delay exacerbated the injury or unnecessarily prolonged an inmate's pain.'" *Reck v. Wexford Health Sources, Inc.*, 27 F.4th 473, 483 (7th Cir. 2022) (quoting *Arnett v. Webster*, 658 F.3d 742, 753 (7th Cir. 2011)).

I. Wexford Defendants' Motion for Summary Judgment

A. Dr. Spanenberg

[27] Slopsema argues that genuine issues of material fact exist regarding whether Dr. Spanenberg was "deliberately indifferent" because Dr. Spanenberg failed to confirm that hemorrhoids were the cause of Slopsema's bleeding and treated Slopsema for hemorrhoids for two months, during which time Slopsema's symptoms persisted and he lost significant weight. The designated evidence, however, reveals that Slopsema first reported his bleeding to Dr. Spanenberg on March 16, 2018. Dr. Spanenberg diagnosed Slopsema with hemorrhoids and ordered treatments. Over the next few weeks, Slopsema saw Dr. Spanenberg on multiple occasions and had almost daily visits with the nurses. When Slopsema's symptoms persisted, on April 11, 2018, Dr. Spanenberg referred Slopsema to a specialist because "conservative treatment" had failed. Appellant's App. Vol. III p. 244. While waiting for the appointment with the specialist, Slopsema again had visits with the nurses once or twice a day. The specialist, Dr. Tapia, also diagnosed Slopsema with hemorrhoids and recommended a colonoscopy.

[28] While waiting for the colonoscopy, however, Slopsema's pain increased, and his hemoglobin levels dropped. Dr. Spanenberg determined that emergency care was necessary and sent Slopsema to the local hospital's emergency room, where he was diagnosed with diffused colitis. Dr. Spanenberg, however, suspected that Slopsema had ulcerative colitis and a C. difficile infection and

began treating Slopsema for those conditions while they waited on the colonoscopy, which was scheduled for the following week. A couple of days later, however, Slopsema's hemoglobin levels were "critical," and Dr. Spanenberg transferred Slopsema to Methodist Hospital. *Id.* at 178. After his discharge from Methodist Hospital, Slopsema was sent to a different prison, and Dr. Spanenberg did not care for him again.

[29] In *Williams*, we addressed a trial court's grant of summary judgment to prison medical providers after an inmate died from complications of lupus during her incarceration. On appeal, however, we reversed the trial court's grant of summary judgment to certain medical providers. We noted that the Estate designated the affidavit of an expert witness, and we concluded:

> [T]he designated evidence shows that Wood's medical providers rendered care that was described by other medical professionals as "callous," "a severe . . . disregard for [Wood's] clinical status," "inappropriate," "catastrophic," showing "absolutely no interest" in Wood's treatment, "quite suspect," "dismiss[ive]," and "clearly . . . below the standard of care." The designated evidence shows that Wood's medical providers' treatment of Wood "discontinued" essential medication; showed a "basic lack of understanding" of Wood's lupus; repeatedly failed to make "even a cursory phone consultation" that "would have strongly suggested the re-implementation" of her lupus medication; took "no remediation" when learning of [the hospital's] failure to address specific medical concerns and instead "just sort of dropped" those concerns; addressed the "constellation" of lupus symptoms "with Tylenol"; repeatedly failed to recommend or undergo basic follow-up appointments; showed "absolutely no interest" in "modify[ing] or implement[ing]" appropriate

> treatment plans; had no clear or effective long-term plan in place, despite the "necessity" of such a plan for Wood; implemented no "long-term care of any kind"; and failed to appropriately transport her in emergent circumstances. The Estate's medical expert further explicitly testified that the failures of Wood's medical providers were "link[s] . . . in the chain" that resulted in her death.
>
> A reasonable fact-finder could readily conclude from the designated evidence that the responses of Wood's medical providers to her serious medical conditions "were so plainly inappropriate as to permit the inference that the defendants intentionally or recklessly disregarded [Wood's] needs." *Hayes*, 546 F.3d at 524. The record does not suggest a single or isolated instance of medical mistreatment, nor does it suggest that Wood's medical providers reasonably responded to her needs but simply failed to avert harm. The record instead shows systemic and gross deficiencies in her medical care throughout her incarceration, which deficiencies the Estate's expert directly connected to her cause of death. Genuine issues of material fact support at least an inference that the Wood's medical providers "disregard[ed] an excessive risk to [Wood's] health or safety." *Farmer*, 511 U.S. at 837, 114 S. Ct. 1970.

Williams, 142 N.E.3d at 1005-06 (internal citations omitted). Accordingly, we concluded that genuine issues of material fact existed and that the trial court erred by granting summary judgment to the medical providers.

[30] On the other hand, in *Reck*, 27 F.4th 473, the Seventh Circuit affirmed the district court's grant of summary judgment to an inmate's medical providers on a deliberate indifference claim. There, the inmate developed a painful perianal

abscess with recurrent bloody discharge due to his Crohn's disease, which had previously been in remission. The inmate requested to see medical personnel for months. When he was finally seen by a nurse, the nurse referred him to a physician. More than four weeks after the visit with the nurse, he finally saw a physician after his abscess burst. The physician prescribed medication and ordered a follow-up appointment for the next month. During the next month, however, the abscess continued to burst, and the inmate was in severe pain. At the follow-up appointment, the physician referred the inmate to a gastrointestinal specialist and ordered a colonoscopy. The inmate received the colonoscopy a month later and saw the specialist almost three months later. The specialist referred the inmate to consultation with a surgeon, which occurred a month later. The surgeon then performed a successful surgery.

[31] The Seventh Circuit concluded:

> The main point of disagreement between the medical experts is whether Dr. Trost should have referred Mr. Reck directly to a surgeon on October 2 when he realized that his initial conservative treatment with antibiotics had been ineffectual. We therefore must examine carefully Dr. Trost's treatment decision in light of the deliberate-indifference principles we have articulated. Delay, especially when it implicates a worsening of the patient's condition or prolonged and unnecessary pain can constitute, under some circumstances, a violation of the Eighth Amendment. Here, Dr. Hellerstein opined that he would have made the surgical referral on that date, but, notably, he could point to no harm to Mr. Reck as a result of Dr. Trost's decision. Dr. Gage testified that she would have decided upon the same progression of treatment as Dr. Trost. No doubt, we must

> consider the persistence of pain during the last quarter of the year, but, as Dr. Gage testified, the countervailing pain of surgery must be weighed by a physician in determining a course of treatment.
>
> The record reveals no support for an Eighth Amendment violation. It shows, at most, a disagreement among physicians which does, not, without more, establish the necessary reckless disregard for patient harm and pain required for a constitutional violation. Beginning on October 2, Dr. Trost took the steps necessary to obtain approval of the review board to secure Mr. Reck further treatment. The necessity of the colonoscopy and the consultation with a gastroenterologist may be debatable among physicians, but these steps hardly demonstrate a reckless disregard for Mr. Reck's well-being. We do not see here any indication that Dr. Trost ignored the gravity of Mr. Reck's condition or "slow-walked" his treatment plan.
>
> Nor can we say that Dr. Trost's pharmaceutical management of Mr. Reck's condition while awaiting surgery constituted reckless disregard for Mr. Reck's medical well-being. After the initial pharmaceutical intervention failed during September, Dr. Trost prescribed on October 2 a fourteen-day regimen of Levaquin and Ibuprofen, 800 mg three times a day as needed. There is no evidence in this record that would allow a reasonable jury to conclude that Dr. Trost acted in a reckless manner in prescribing medications while awaiting consultations with specialists.
>
> The district court properly concluded that Dr. Trost's course of treatment of Mr. Reck's medical condition will not support an Eighth Amendment claim.

Reck, 27 F.4th at 484-85 (footnote omitted).

[32] Here, Slopsema was examined by Dr. Spanenberg multiple times and was treated by the nurses almost daily—sometimes twice a day. Dr. Spanenberg designated Dr. Bomba's expert opinion, which provided, in part: "It is my professional medical opinion, to a reasonable degree of medical certainty, that care and treatment provided by Dr. Spanenberg . . . was appropriate and within the applicable standard of care." Appellant's App. Vol. II p. 124. In response, Slopsema designated no evidence that Dr. Spanenberg should have treated Slopsema differently, that specific other tests or exams should have been performed, or that Dr. Spanenberg's failure to immediately diagnose Slopsema with ulcerative colitis amounted to negligence, much less deliberate indifference.

[33] As in *Reck*, the designated evidence simply reveals no deliberate indifference of Slopsema's serious medical needs by Dr. Spanenberg. *See, e.g., Reck,* 27 F.4th at 484-85 (affirming the grant of summary judgment where the record showed, "at most, a disagreement among physicians which does [] not, without more, establish the necessary reckless disregard for patient harm and pain required for a constitutional violation"). Under these circumstances, Slopsema has failed to demonstrate a genuine issue of material fact, and the trial court properly granted summary judgment to Dr. Spanenberg.

B. Wexford

[34] As for Wexford, Slopsema acknowledges that, "pursuant to § 1983, liability cannot rest on a theory of respondeat superior, so in order to present a theory of

deliberate indifference, [Slopsema] was required to show a Wexford policy was the 'direct cause' or 'moving force' behind his constitutional injury." Appellant's Br. p. 11 (quoting *Minix v. Canarecci*, 597 F.3d 824, 832 (7th Cir. 2010)). "Respondeat superior liability does not apply to private corporations under § 1983." *Shields v. Illinois Dep't of Corr.*, 746 F.3d 782, 789 (7th Cir. 2014). "Such a private corporation cannot be held liable under § 1983 unless the constitutional violation was caused by an unconstitutional policy or custom of the corporation itself." *Id.* Thus, Slopsema "must offer evidence that his injury was caused by a Wexford policy, custom, or practice of deliberate indifference to medical needs, or a series of bad acts that together raise the inference of such a policy." *Id.*

[35] Slopsema argues that Wexford policies did not allow medical providers to "have the final say in what treatments were provided to patients" and that treatments requested by Dr. Spanenberg "were not being approved by officials." Appellant's Br. p. 12. Slopsema, however, fails to designate any evidence that Wexford did not approve specific treatments. In fact, Dr. Spanenberg referred Slopsema to a specialist and scheduled a colonoscopy. When Slopsema needed emergency care, Dr. Spanenberg did not wait for permission from Wexford officials to send Slopsema to the hospital.

[36] Slopsema also contends that he was required to see a nurse before he was allowed to see Dr. Spanenberg and that the nurses did not notify Dr. Spanenberg of Slopsema's decline. Dr. Spanenberg testified that to see a

doctor, an inmate would "fill[] out a healthcare request" and would be "seen the same day by an RN." Appellant's App. Vol. II p. 164. If the nurse determined that the patient needed to see the doctor, they "would make that happen" without a "huge delay." *Id.* During the time period at issue, Slopsema had almost daily nurse visits for his sitz baths. Nurses notified Dr. Spanenberg of Slopsema's declining condition on both March 17 and April 8, which resulted in Dr. Spanenberg examining Slopsema. Slopsema has failed to designate evidence showing that the policy of a nurse seeing a patient first caused or contributed to his injury.

[37] Finally, Slopsema argues that Wexford gave medical providers training regarding prisoners' attempts to manipulate the providers and instructions to reference the patients as prisoners rather than patients in medical records. Dr. Spanenberg testified that, when he started working in the DOC, he received training to avoid being manipulated by inmates and avoid being "perceived as providing people with favors or any kind of preferences[.]" *Id.* at 92. Although protocol required the nurses to refer to the patients as offenders, Dr. Spanenberg always simply referred to them as patients. Slopsema failed to designate any evidence that this training in any way caused or contributed to his injury.

[38] We conclude that Slopsema has simply failed to designate any evidence that his injury was caused by a Wexford policy, custom, or practice of deliberate indifference to medical needs or that a series of bad acts that together raise the inference of such a policy. Under these circumstances, Slopsema has failed to

demonstrate a genuine issue of material fact, and the trial court properly granted summary judgment to Wexford on Slopsema's claims.

II. State Defendants

[39] Next, Slopsema argues that the trial court erred by granting summary judgment to the State Defendants. Slopsema contends that genuine issues of material fact exist as to whether the State Defendants acted with deliberate indifference as to his serious medical needs. According to Slopsema, the policies and procedures of the State Defendants demonstrate deliberate indifference, and their actions "constitute an excessive risk to inmate health or safety." Appellant's Br. p. 15.

[40] In response, the State Defendants argue that the State and its agencies are not subject to suit under Section 1983. Section 1983 "provides a civil remedy against any '*person*' who, acting under color of state law, subjects an American citizen to a deprivation of any rights, privileges, or immunities secured by the United States Constitution or federal laws." *Rowe v. Lemmon*, 976 N.E.2d 129, 134 (Ind. Ct. App. 2012) (quoting 42 U.S.C. § 1983) (emphasis added), *trans. denied*. "The United States Supreme Court has held that for Section 1983 purposes, the term 'person' does not include a state or its administrative agencies." *Melton*, 156 N.E.3d at 649 (citing *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312 (1989)). "The statute does not provide any remedy against states, state entities, or state officials sued in their official capacity." *Rowe*, 976 N.E.2d at 134. "A government employee acting in his or

her individual capacity, however, is a 'person' who may be sued under Section 1983." *Id.*

[41] Here, Slopsema brought a Section 1983 action against the DOC and the Prison, which are state agencies. Slopsema did not bring an action against a governmental employee of these agencies acting in his or her individual capacity. Because the State Defendants may not be sued under Section 1983, the trial court properly entered summary judgment in favor of the State Defendants.

Conclusion

[42] The trial court properly entered summary judgment in favor of the Wexford Defendants and the State Defendants. Accordingly, we affirm.

[43] Affirmed.

Vaidik, J., and Foley, J., concur.