

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Derek D. Fingers,  
*Appellant-Plaintiff,*

v.

Robert Carter, Jr., Gary Durak,  
Barbara Eichman, John  
Galipeau, John Salyer, Richard  
Usdowski, and Monica Wala,  
*Appellees-Defendants.*

December 29, 2023

Court of Appeals Case No.  
23A-PL-908

Appeal from the  
LaPorte Superior Court

The Honorable  
Richard R. Stalbrink, Jr., Judge

Trial Court Cause No.  
46D02-2001-PL-27

**Memorandum Decision by Senior Judge Shepard**  
Judges Bradford and Weissmann concur.

**Shepard, Senior Judge.**

- [1] Derek Fingers appeals the trial court's entry of summary judgment in favor of the Appellees. Concluding the trial court properly entered summary judgment, we affirm.

## Facts and Procedural History

- [2] Fingers was an inmate at the Westville Correctional Facility (WCF). While there, he had visits with and/or was treated by Dr. Wala, Dr. Eichman, and Richard Usdowski. Although Dr. Durak also provided care to the inmates at WCF, he did not have any visits with or participate in the treatment of Fingers.

[3] In January 2020, Fingers brought an action under 42 U.S.C. § 1983 against employees of the Department of Correction Robert Carter, Jr., John Galipeau, and John Salyer (collectively “State Defendants”) and Doctors Wala, Durak, and Eichman, and Usdowski (collectively “Medical Defendants”). In his complaint, Fingers alleged use of excessive force and deliberate indifference to his mental health needs in violation of his Eighth Amendment rights. The Defendants all moved for summary judgment, which the trial court granted in two distinct orders: the State Defendants were granted summary judgment on December 20, 2022, and the Medical Defendants were granted summary judgment on March 31, 2023. Fingers now appeals.

## Discussion and Decision

[4] Before examining the propriety of the entry of summary judgment, we must first address a procedural issue. The State Defendants assert, and Fingers does not dispute, that he has already appealed the trial court’s separate order granting their motion for summary judgment. In *Fingers v. Carter*, No. 23A-PL-132 (Ind. Ct. App. Aug. 15, 2023) (mem.), Fingers challenged the trial court’s December 20, 2022 grant of summary judgment to the State Defendants and its holding that *Fingers’ claims were barred because he failed to exhaust his administrative remedies*. This Court affirmed the trial court’s entry of summary judgment for the State Defendants. *Id.* at \*5.

[5] Here, Fingers again challenges the trial court’s determination that he failed to exhaust his administrative remedies. However, that issue was raised on

summary judgment only by the State Defendants and was already appealed and decided by this Court. *See id.* Accordingly, we will not revisit that determination in this appeal, and we limit our review to Fingers' challenge of the trial court's entry of summary judgment in favor of the Medical Defendants.

[6] When reviewing the entry of summary judgment, our standard of review is similar to that of the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *City of Indianapolis v. Cox*, 20 N.E.3d 201, 205-06 (Ind. Ct. App. 2014), *trans. denied*. "Once the moving party has sustained its initial burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating specific facts establishing a genuine issue for trial." *Sheehan Const. Co., Inc. v. Cont'l Cas. Co.*, 938 N.E.2d 685, 689 (Ind. 2010). All facts and reasonable inferences drawn from those facts are construed in favor of the non-movant. *Id.* at 688. Further, the trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating the grant of summary judgment was erroneous. *Auto-Owners Ins. Co. v. Benko*, 964 N.E.2d 886, 890 (Ind. Ct. App. 2012) (quoting *Cox v. N. Ind. Pub. Serv. Co., Inc.*, 848 N.E.2d 690, 695-96 (Ind. Ct. App. 2006)), *trans. denied*.

[7] In his complaint, Fingers alleged his Eighth Amendment right to be free from cruel and unusual punishment was violated when he received inadequate mental health treatment from the Medical Defendants while he was an inmate

at WCF. “To prevail on an Eighth Amendment claim, a plaintiff must show that the responsible prison officials were deliberately indifferent to his serious medical needs.” *Sherrod v. Lingle*, 223 F.3d 605, 610 (7<sup>th</sup> Cir. 2000). To establish deliberate indifference, a plaintiff must show both that (1) the medical condition was objectively serious and (2) the state officials acted with deliberate indifference to his medical needs. *Id.* “A condition is objectively serious if the failure to treat it ‘could result in further significant injury or the unnecessary and wanton infliction of pain.’” *Id.* (quoting *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7<sup>th</sup> Cir. 1997)). Deliberate indifference is a subjective standard that requires a reckless disregard (i.e., both knowing and disregarding) of a substantial risk of serious harm to an inmate’s health. *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 1979, 128 L. Ed. 2d 811 (1994).

[8] Specifically, Fingers contends his treatment was inadequate because the Medical Defendants concealed his psychotic disorder and refused to diagnose him with such so that he could be classified as “seriously mentally ill” and be moved to a different housing unit within WCF. *See* Appellant’s App. Vol. 2, pp. 48, 50-54 (Plaintiff’s Response to Defendants’ Motion for Summary Judgment). The standard for such a claim has been stated thusly:

For a claim against a prison medical provider, the plaintiff must show that the medical professional’s response was so inadequate that it demonstrated an absence of professional judgment. A mere difference of opinion about a treatment decision will not suffice; [a] medical professional is entitled to deference in treatment decisions unless no minimally competent professional would have so responded under those circumstances. Put

slightly differently, where a prisoner has received at least some medical treatment[,] . . . he must show a substantial departure from accepted professional judgment, practice, or standards. And expert medical evidence is often required to prove this aspect of [the] claim.

*Johnson v. Prentice*, 29 F.4th 895, 905 (7<sup>th</sup> Cir. 2022) (internal citations and quotation marks omitted), *cert. denied*.

[9] In support of his claims, Fingers designated a portion of his DOC medical records. He points to notations that he was prescribed Risperdal, which he alleges is an anti-psychotic drug and, therefore, proof of the Medical Defendants' deliberate indifference to his mental health needs because he was not diagnosed with a psychotic disorder. He also included a copy of the DOC policy for the disciplinary restrictive status housing unit.

[10] The complete record, however, does not bear out Fingers' claims. In support of their motion for summary judgment, the Medical Defendants designated affidavits from each of them, Fingers' deposition, and his medical records. Dr. Durak was not involved in Fingers' treatment, which Fingers acknowledged in his deposition. Usdowski and Drs. Wala and Eichman all participated in Fingers' mental health treatment and agreed that Fingers had been diagnosed correctly with anti-social personality disorder, with no signs of psychosis. Appellees' App. Vol. 2, pp. 43-44, 47, 54 (Ex. B Aff. of Dr. Wala, Ex. C Aff. of Dr. Eichman, Ex. D Aff. of Usdowski). The designated evidence reflects that Fingers was seen and treated on multiple occasions by Usdowski and Doctors Wala and Eichman.

[11] Further, he had access to treatment via the mental health staff's weekly rounds as well as monthly out-of-cell visits, which he was offered but refused on several occasions. His medical records show he regularly saw a psychiatrist for medication and received the medication. In addition, when he expressed suicidal ideation, he was placed on suicide watch. Moreover, in his deposition, Fingers admitted to being seen by mental health staff on multiple occasions and during the staff's weekly rounds. Dr. Wala averred that, in her clinical opinion, based upon her visit with Fingers and his medical records, he "attempts to make claims of mental illness in an effort to manipulate his housing assignment, and avoid any consequences of his actions." *Id.* at 44 (Ex. B Aff. of Dr. Wala).

[12] The evidence before the court shows that Fingers had consistent, appropriate mental health treatment and services. There was no evidence that the Medical Defendants' treatment of Fingers represented a substantial departure from accepted professional judgment, practice, or standards. In the face of this record, Fingers did not marshal sufficient evidence to create a triable issue on the adequacy of the Medical Defendants' care. Thus, the trial court properly entered summary judgment in favor of the Medical Defendants.

[13] Affirmed.

Bradford, J., and Weissmann, J., concur.