

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 19, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-0148**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**QUINTON JACKSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**GEORGE DALEY, M.D., AND STATE OF WISCONSIN  
DEPARTMENT OF CORRECTIONS,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Quinton Jackson appeals from an order dismissing his claim against Dr. George Daley and the Department of Corrections. Jackson alleged a violation of his Eighth and Fourteenth Amendment protections against cruel and unusual punishment, and sought damages and injunctive relief under 42

U.S.C. § 1983. He specifically alleged that Daley withheld necessary medical care. The trial court denied the claim on Daley's summary judgment motion, and we affirm that decision.

The undisputed facts include the following. Jackson suffered injuries in a car accident on December 30, 1994, while serving a sentence in a Wisconsin Correctional Institution. He reported muscle spasms and back pain in the following days, and was diagnosed with a back injury. He received medication, but DOC medical staff cleared him for janitorial duties.

On January 31, 1995, the DOC released Jackson on parole. While on parole, he received chiropractic treatment from February 8 through May 16, 1995, but received no other treatment until he returned to prison on a parole violation in October 1995.

Upon reentry into the correctional system, Jackson was deemed available for light work and, in view of his injuries, assigned to Racine Correctional Institution which has an on-site health service unit. Between October 1995 and July 1996, Jackson visited the health unit twenty times complaining of back pain. On seven occasions his treating physicians recommended examination by a neurologist or orthopedic specialist. Each request was reviewed by Daley, the Medical Director of the Division of Health Services for the DOC. Daley denied each of the seven referrals on the grounds that there was no objective finding of injury that would support a referral. On two occasions, Daley also discontinued pain medication for Jackson. Daley did not, however, personally examine Jackson.

Jackson then commenced this lawsuit, alleging that Daley was deliberately and recklessly indifferent to his medical needs. He sought damages

and an injunction ordering his temporary release for medical treatment by a neurologist.

At the summary judgment hearing, Jackson asked for an order allowing him to be examined by a neurologist to prove his need for treatment. The trial court denied the request and granted summary judgment because, even with added proof of an inadequately treated serious injury, there was no evidence allowing the inference that Daley was deliberately indifferent to that injury. The trial court reaffirmed that decision on Jackson's motion for reconsideration, resulting in this appeal.

Summary judgment is appropriate if material facts are undisputed, only one reasonable inference is available from those facts, and that inference requires judgment for a party as a matter of law. *Wagner v. Dissing*, 141 Wis.2d 931, 939-40, 416 N.W.2d 655, 658 (Ct. App. 1987). We independently decide this issue without deference to the trial court. *Schaller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986). To prove an Eighth Amendment claim based on deprivation of medical treatment, the prisoner must not only prove a serious need for treatment, but that prison officials or medical staff were deliberately indifferent to the prisoner's medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976).

Daley provided a prima facie case that he was not deliberately indifferent to Jackson's medical needs. He reported that he thoroughly evaluated Jackson's records and spoke with his primary examining physician. He was thus aware that two of the seven requests for referral were based on nonmedical considerations: protecting the DOC from liability in a personal injury action and Jackson's ability to pay for an examination through his wife's health insurance,

while the other requests were based on no more than Jackson's subjective complaints. Daley also considered that Jackson only sought limited chiropractic treatment while on parole for eight and one-half months after the accident. Additionally, Jackson's prison work record showed that he was able to work after returning to prison.

The only inference available from these facts is that Daley was not deliberately indifferent to Jackson's condition, but instead fairly evaluated his condition on the available information, and reasonably determined that a specialist's examination was unnecessary. Jackson introduced no evidence to the contrary, thus establishing Daley's right to summary judgment.

The trial court properly denied Jackson's request to stay proceedings and ordered the DOC to allow a specialist's evaluation. As the trial court noted, the dispositive factor on summary judgment was Daley's prima facie case that he was not deliberately indifferent to Jackson's need for treatment, and Jackson's failure to provide any evidence to the contrary. Even if a specialist provided evidence that Daley underestimated the seriousness of Jackson's injury and his need for treatment, that evidence would not allow the inference of deliberate indifference necessary to Jackson's claim. It is that issue alone, and not the actual nature of Jackson's injury, that resolves this case in Daley's favor.

*By the Court.*—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

