

814 Fed.Appx. 134 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 6th Cir.

Rule 32.1.

United States Court of Appeals, Sixth Circuit.

Jeffrey D. MANN; John T. Bragg; Eric Pastrano,
Plaintiffs-Appellants,

v.

OHIO DEPARTMENT OF REHABILITATION
AND CORRECTION; Mona C. Parks; Gary C.
Mohr; David Hannah; Janice Douglas, Doctor;
Andrew D. Eddy, Doctor; Annette
Chambers-Smith; Grafton Correctional Institute
Health Care Administrator, Defendants-Appellees.

No. 19-4060

|
August 03, 2020

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF OHIO

Attorneys and Law Firms

Jennifer Wedekind, American Civil Liberties Union,
Washington, DC, David Joseph Carey, American Civil
Liberties Union of Ohio Foundation, Columbus, OH,
Freda Levenson, ACLU of Ohio, Cleveland, OH, for
Plaintiffs - Appellants

John T. Bragg, Pro Se

Jeffrey D. Mann, Pro Se

Benjamin Michael Flowers, Mindy Ann Worly, Office of
the Attorney General of Ohio, Columbus, OH, Shams
Hanif Hirji, Deputy Solicitor General, Ohio Attorney
General's Office, Appeals Section, Columbus, OH, for
Defendants - Appellees

Gregory F. Laufer, Paul, Weiss, Rifkind, Wharton &
Garrison, New York, NY, for Amici Curiae Doctor
Joseph Bick, Doctor Joseph Goldenson, Doctor Robert F.
Greifinger, Doctor Stacey B. Trooskin, Doctor Marc
Stern, Hepatitis Education Project, International Network
on Hepatitis in Substance Users-Prisons Network,
National Viral Hepatitis Roundtable

BEFORE: BOGGS, SUTTON, and WHITE, Circuit

Judges.

Opinion

PER CURIAM.

*135 Some Ohio prisoners suffer from Hepatitis C, a slow-moving infection that can cause serious harm in some people. Ohio monitors all infected prisoners and provides at least some prisoners state-of-the-art medication when a particular test indicates the disease has reached a certain stage. Three Ohio prisoners with Hepatitis C, each denied this medication when they asked for it, filed this putative class action under the Eighth (and Fourteenth) Amendment, challenging Ohio's policy for allocating the medication. They sought damages and an injunction compelling the defendants to provide the medication. The district court rejected their claims as a matter of law on the ground that no Eighth Amendment violation occurred.

After the three plaintiffs appealed that judgment, a few things happened. One: each of the named plaintiffs received at least some of the medication they asked for. That means their request for an injunction may be moot; we have no authority to compel the defendants to do something they have already done. *See Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 714 (6th Cir. 2011). Two: the defendants have raised qualified immunity as a defense to the plaintiffs' request for money damages. Because they did not raise the issue until now, the district court did not have an opportunity to consider the second prong of the defense: whether the defendants violated "clearly established law." *Taylor v. Barks*, 575 U.S. 822, 135 S. Ct. 2042, 2044, 192 L.Ed.2d 78 (2015). Three: the Ohio Department of Rehabilitation and Correction has modified its protocols for treating Hepatitis C. According to representations from counsel at oral argument, a much larger group of inmates has become eligible for immediate medication.

In this evolving setting, we think it best to allow the district court to address these issues in the first instance: to determine whether the plaintiffs' request for injunctive relief is moot, to determine whether *136 qualified immunity bars their money-damages claims, and to determine whether the new prison policy otherwise alters the landscape of this litigation. In the event some or all of the parties remain dissatisfied with the district court's rulings on remand, we stand ready to entertain a second appeal. *See* 6th Cir. I.O.P. 34(b)(2).

All Citations

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