[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12309
Non-Argument Calendar

D.C. Docket No. 2:13-cv-00152-AKK-TMP

THOMAS G. BRENNAN,

Plaintiff-Appellant,

versus

JOSEPH H. HEADLEY,
GWENDOLYN TARRANCE,
CORIZON MEDICAL SERVICES, INC.,
WILLIAM TALLEY,
ANISSA THOMAS, and
COLLEEN OAKES,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(March 20, 2020)

Before MARTIN, ROSENBAUM, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Thomas Brennan, an Alabama prisoner, filed a 42 U.S.C. § 1983 complaint alleging Eighth Amendment violations by Corizon Medical Services, Inc. ("Corizon"); Dr. William Talley; Anissa Thomas; Colleen Oakes; Deputy Warden Joseph Headley; and Warden Gwendolyn Tarrance. The district court granted summary judgment to all defendants. Appealing this judgment, Brennan raises three claims. First, he argues that the district court judge and magistrate judge displayed bias against him. Second, he says the district court did not follow a decision from our Court in Brennan's previous appeal. And third, he asserts that the district court improperly granted summary judgment to Thomas, Talley, Oakes, and Corizon on his Eighth Amendment claims.[1] After careful consideration, we affirm in part and reverse and remand in part.

Brennan also requests that we appoint him appellate counsel. We deny this request. The issues in Brennan's appeal are not so novel or complex that Brennan needs "help in presenting the essential merits of his [] position to the court." See Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir. 1993). Of course, Brennan is free to

[1] Appellees Headley and Tarrance argue that Brennan abandoned his claims against them because he did not make any arguments based on their actions. It is true that Brennan failed to make any arguments about Headley or Tarrance in his brief on appeal, so we agree that he has abandoned his claims against them. See Sepulveda v. U.S. Att'y Gen., 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) (per curiam) ("When an appellant fails to offer argument on an issue, that issue is abandoned."). We therefore affirm the district court's grant of summary judgment to Headley and Tarrance.

move for appointment of counsel in the district court to assist him with his case on remand.

I.

When reviewing a grant of summary judgment, we must view the facts in the light most favorable to the nonmoving party. Gillis v. Ga. Dep't of Corr., 400 F.3d 883, 884 n.2 (11th Cir. 2005). For that reason, we recite the facts in the light most favorable to Brennan. See id. In 1971, long before his incarceration, Brennan was hit by a truck while riding a bicycle. This accident inflicted severe injuries on both his legs and one of his hips, requiring several surgeries. As a result, Brennan later developed scoliosis and sciatic nerve damage and suffered from chronic back pain.

With this medical history, Brennan arrived at Alabama's St. Clair Correctional Facility ("SCCF") in June 2010. He was seen there by Dr. William Talley and certified registered nurse practitioner ("CRNP") Anissa Thomas. Thomas knew Brennan's childhood injury precipitated a "long history of musculoskeletal problems" and that Brennan had endured "long-term chronic pain for approximately 20 years." Thomas and Talley regularly renewed Brennan's accommodations for a "cane, back brace, [and] knee sleeve" and gave him permission to avoid "prolonged walking or standing" in his daily activities. However, SCCF medical staff never renewed Brennan's previous, ongoing

prescriptions for Mobic, Robaxin, and Tylenol. Brennan says Thomas canceled those prescriptions without examining him, because she decided Brennan "no longer needed" them.

In the early hours of November 4, 2010, Brennan slipped and fell on a waxed concrete floor. He reported this injury to a different nurse, who observed Brennan was limping and "could hardly bend over." She saw that Brennan had bruising on his knee and elbow and that his right side and lower back were "very tender to touch."

A. Anissa Thomas's treatment of Brennan

Brennan visited Thomas in the afternoon after his fall, and he told her he had pain in his neck, shoulder, elbow, lower back, hip, and knees. Thomas ordered x-rays of Brennan's spine, shoulder, elbow, and knee; renewed Brennan's prescription for Mobic (a pain-killer and anti-inflammatory drug); and wrote Brennan a temporary prescription for Motrin (another anti-inflammatory drug) as a stopgap until the Mobic prescription arrived. Thomas also renewed Brennan's accommodation to avoid prolonged walking or standing. However, Thomas never ordered an x-ray of Brennan's neck.

On November 8, a radiologist deemed Brennan's x-rays "normal" and "unremarkable." Thomas communicated these results to Brennan two days later. Brennan was unsurprised because his injuries didn't feel like broken bones; he told

Thomas "[t]here must be something else wrong," potentially related to his scoliosis or sciatica. Thomas did not agree. She told Brennan his increased, "severe" pain was only bruising and sprained muscles, and that lots of people—including Thomas herself—lived with scoliosis. Brennan asserts it was obvious to Thomas that he was upset, in pain, and struggling with limited movement, but Thomas did not conduct any physical examination of him. Thomas gave Brennan Tylenol for pain and told him to apply heat for further pain relief. When Brennan asked to see a doctor and to receive stronger pain medication (Lortab, an opiate analgesic) and muscle relaxers, Thomas "became very upset," yelled at Brennan to "listen," and said, "You're not ever going to see a doctor and you're not ever going to get strong pain medications or muscle relaxers." At this time, Thomas knew that Brennan had no history of seeking opiate drugs.

The next day, on November 11, Brennan submitted a request to sick call about the pain from his fall, asking to "see an orthopedic specialist, have an MRI of [his] spine, and to have a doctor . . . assess his condition." Thomas met with Brennan the next day and dismissed this request. Once again, Thomas yelled at Brennan to listen and told him he would never see an orthopedic specialist or a neurologist, never have an MRI performed, and never see a doctor. Instead, Thomas told Brennan, "You have to let the medicine I prescribed to you a week ago get into your bloodstream." Brennan asked, "The Tylenol?" and Thomas

ended the consult. Immediately after this meeting, Brennan submitted another sick call slip making the same requests, asserting his right to see a doctor, and protesting that Thomas had denied him "all these things today."

Thomas saw Brennan again on November 15. Brennan raised his previous complaints and told Thomas he had "a bulge in his neck on his spine which was not ever like that before." Thomas "got up from behind her desk, put one finger on the bump, and said, 'That's your spine.'" Brennan said his spine was different since the fall, but Thomas replied his spine was normal. She told Brennan to leave her office when he asked again to have an MRI and see a doctor and specialists. Meanwhile, Brennan had not received the medication Thomas had promised: his medical records reflect that the pharmacy never filled his prescription for Mobic and only filled his Tylenol prescription on November 15, 11 days after his fall.

His injuries still largely untreated, Brennan filed a medical grievance directed to Health Services Administrator ("HSA") Colleen Oakes on November 16. The grievance explained his pre-existing conditions, his fall and resulting pain, and his interactions with Thomas. Brennan requested to see a doctor, an orthopedic specialist, and a neurologist, and asked for an MRI. On November 24, after receiving no response from Oakes, Brennan filed a second medical grievance to Oakes and filed an inmate request slip directed to a SCCF Deputy Warden Joseph Headley. In both, Brennan described the lack of treatment for his neck and

back and how Thomas had prevented him from seeing a doctor or specialist. Oakes responded on November 28. She told Brennan he was not taking his medication as instructed, was not entitled to see a doctor, and should submit another sick call slip if he was still suffering. Brennan explained to Oakes that his prescription for Mobic had not been filled at SCCF, but that he had been taking the Motrin and the Tylenol without any relief.

On December 1, Warden Headley ordered the medical unit to "review & advise" on Brennan's complaints. The following day, Thomas saw Brennan again. Brennan reported a knot on his neck, "worsening pain," "muscle spasms," and "numbness" in his fingers and toes. Brennan repeated that the Tylenol was not helping his pain and the Mobic prescription had still not been filled. He asked for Robaxin, a muscle relaxer, which he had previously taken long-term at another prison facility. Thomas refused to prescribe Robaxin for his long-term pain. Brennan asked, "Do you care if I'm in pain?" Thomas ignored the question, repeating that she had scoliosis and that Brennan's x-rays were negative. Thomas then looked at the knot on Brennan's neck and told him it was his spine. Brennan reiterated that he knew that, but his spine was not sticking out and "radiating pain" before his fall. Thomas again denied him medical treatment and his requests to see a doctor.

HSA Oakes replied to Brennan's medical grievance on December 6. She told him she had "requested Dr. Talley to examine you and make referrals if appropriate."

B. Dr. William Talley's treatment of Brennan

Brennan was treated by Dr. William Talley starting on December 8. Talley examined Brennan and saw he had a limited range of movement. Talley expressed concern that a neck x-ray had not been ordered. Talley ordered a neck x-ray and prescribed a two-week supply of a muscle relaxer. By December 20, Talley received the results of the x-ray, which suggested there was "definitely something wrong" with Brennan's neck, possibly herniated discs. Talley prescribed twice-a-day Vicodin for 30 days and ordered CT scans of Brennan's neck and back. On December 29, Brennan reported to Talley that he was experiencing severe pain for eight to ten hours a day, and he asked Talley to increase his dosage to Vicodin three times per day. Talley declined, citing Corizon's policy that pain medication three times a day was only allowed for "broken bones, cancer or . . . surgery."

From this point forward, Talley prescribed Brennan opioid pain relief in varying doses until May 26, 2011. In February 2011, Talley and HSA Oakes met with Brennan personally to discuss his pain medication and hear Brennan's concerns about pain management. From December 2010 through May 2011,

Brennan experienced only one gap in medication between April 25 and 29. On this occasion, Talley forgot to renew the prescription.

On May 16, however, Talley changed Brennan's medication. Talley tapered the Vicodin and prescribed Naprosyn, a nonopioid painkiller for mild to moderate pain. Unfortunately, on May 29, Brennan slipped in the shower. Brennan caught himself, but he heard a cracking sound in his neck and felt pain and numbness in his left side. Brennan had an MRI on June 1, which showed degeneration of his spine at the neck and lower back. Talley observed Brennan had a limited range of back movement in all directions, but a full range of movement otherwise. Brennan's posture was stooped and he was using a cane. Brennan asked Talley to re-prescribe Vicodin, but Talley said that medication was only for cancer patients. Instead, Talley placed Brennan on Voltaren, a drug similar to Naprosyn, and prescribed Ultram, an opioid analgesic, for two nights. Talley also provided Brennan a wheelchair, which Brennan accepted because it was too painful to walk to the bathroom, sleep, sit, or eat. When Brennan expressed that the non-opioid pain medication was not working, Talley prescribed Motrin, which Brennan did not take. After learning that Brennan missed all previous Motrin doses, Talley discontinued Brennan's prescription.

In July, Brennan wrote a sick call slip, reporting, "I can no longer endure the pain and suffering and discomfort I'm being put thru. I need to see Dr. Talley . . .

ASAP." When Talley next saw Brennan, he responded by prescribing him Ultram for two days. At a later appointment in August, Talley responded to Brennan's complaints of pain by prescribing him Ultram for one day.

Brennan filed a grievance with Oakes about this reduced medication regimen. Oakes responded by scheduling Brennan an appointment with Talley. Brennan also filed a grievance with Warden Tarrance, saying Talley's refusal to prescribe him narcotics was "a cost-saving policy, for I know of other inmates who do not have cancer and are receiving [narcotics] for their pain issues."

Beginning in December 2010, Talley also oversaw Brennan's referrals for surgery. Talley repeatedly expressed concern about the delay in scheduling the neurosurgery consultation and arranged for Brennan to meet with a neurosurgeon, once in May and once in July.

Brennan finally received surgery to fuse vertebrae in his spine and repair his damaged lumbar discs on September 26, 2011. Brennan was placed on Vicodin during recovery, then tapered off. Talley then prescribed Baclofen, a muscle relaxer, and submitted a request for a physical therapy consult, which included one therapy session and a "home exercise program."

In late October, Talley diagnosed Brennan with gout and prescribed him Vicodin, Baclofen, Indocin, and Allopurinol (two gout medications) for a week. In November, Brennan reported to Talley that his pain was under control, so Talley

renewed the prescriptions for Mobic, Tylenol, and Baclofen. Brennan also asked Talley to take him off Vicodin because it made him sleepy and he wanted to evaluate his pain post-surgery.

In December 2011, Brennan reported worsening neck and lower back pain and asked for narcotics. Talley placed Brennan on Corizon's "chronic pain management" program and explained that Brennan's medication would be renewed every 30 days at no cost to him. Brennan's pain has been under control since.

C. Procedural History

In January 2013, Brennan filed a federal complaint alleging Eighth Amendment claims against Thomas, Oakes, Talley, and Corizon. His complaint was referred to a magistrate judge, who recommended sua sponte dismissal of the complaint for failure to state a claim pursuant to 28 U.S.C. § 1915A(b)(1). The district court adopted this recommendation. On appeal, this Court reversed, holding that Brennan stated viable Eighth Amendment claims for deliberate indifference against all four defendants. See Brennan v. Comm'r, Ala. Dep't of Corr., 626 F. App'x 939, 941–45 (11th Cir. 2015) (per curiam) (unpublished). On remand, following discovery, all defendants moved for summary judgment. The magistrate judge recommended granting summary judgment to these defendants, and the district court adopted this recommendation. Brennan filed a timely notice of appeal.

II.

We review a district judge's decision about whether to recuse herself for an abuse of discretion. In re Walker, 532 F.3d 1304, 1308 (11th Cir. 2008) (per curiam).

We review de novo the district court's grant of summary judgment. Alvarez v. Royal Atl. Developers, Inc., 610 F.3d 1253, 1263 (11th Cir. 2010). We will affirm if, upon construing the evidence in the light most favorable to the non-movant, we find that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. at 1263–64. We are mindful that pro se filings such as Brennan's are liberally construed and held to less stringent standards than those drafted by lawyers. Jones v. Fla. Parole Comm'n, 787 F.3d 1105, 1107 (11th Cir. 2015).

III.

A.

Brennan first argues the magistrate judge and district court judge in his case were biased against him and violated the judicial canon of ethics by refusing to recuse themselves. Brennan did not raise this issue below, so he must show plain error. See Hamm v. Members of Bd. of Regents, 708 F.2d 647, 651 (11th Cir. 1983).

Brennan does not meet his burden in establishing bias on the part of the judges. Brennan points to certain factfinding in the magistrate judge's report and recommendation ("R&R"), along with the district court's adoption of this R&R. Specifically, Brennan says both judges accepted and "cover[ed] for" lies in Thomas's affidavit. But we are mindful that "[n]either a trial judge's comments on lack of evidence, [nor] rulings adverse to a party . . . constitute pervasive bias." Id.; see also McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990) (per curiam) (declining to accept "allegations of bias [that] stem merely from disagreement with several evidentiary rulings of the district court"). Based on his showing, we must reject Brennan's claims of bias.

B.

Brennan also argues the district court failed to follow this Court's opinion in his previous appeal, in which we reinstated several of his Eighth Amendment claims. The earlier opinion held that Brennan alleged sufficient facts to survive a motion to dismiss. See Brennan, 626 F. App'x at 941–44. But to survive a summary judgment motion, Brennan must point to the presence of disputed, material facts. See Clark v. Coats & Clark, Inc., 929 F.2d 604, 607–08 (11th Cir. 1991). In light of these different standards, the district court's grant of summary judgment did not stray from our earlier opinion.

C.

Last, Brennan challenges the district court's grant of summary judgment to Corizon, Thomas, Talley, and Oakes on Brennan's Eighth Amendment claims. Brennan says these defendants denied him pain relief and delayed specialist care that was crucial to treat his injuries. We reverse the grant of summary judgment to Thomas and hold that a reasonable jury could find Thomas acted with deliberate indifference from November 10, 2010, to December 2, 2010. Otherwise, we affirm.

Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976). A prisoner seeking to show that a prison official acted with deliberate indifference to serious medical needs must satisfy both an objective and a subjective inquiry. Farrow v. West, 320 F.3d 1235, 1243 (11th Cir. 2003).

Under the objective component, a prisoner must set forth evidence of an objectively serious medical need. Id. A serious medical need 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." Id. (quotation marks omitted). Brennan's degenerative herniated discs immediately limited his ability to move, caused him around-the-clock pain, numbness, and spasms, and eventually put him in a wheelchair and necessitated surgery. This condition was an objectively serious one. See Harris v. Prison

Health Servs., 706 F. App'x 945, 948–51 (11th Cir. 2017) (unpublished) (holding a prisoner stated a claim for deliberate indifference to injuries from a fall, including "pain in his head, neck, and hands, numbness in his right arm . . . [a] knot and swelling on his head last[ing] at least twenty days"); Brown v. Hughes, 894 F.2d 1533, 1538 (11th Cir. 1990) (per curiam) (citing "broken and dislocated cervical vertebrae" as an example of a serious injury); Hughes v. Joliet Corr. Ctr., 931 F.2d 425, 427–28 (7th Cir. 1991) (holding a complaint stated a claim for deliberate indifference to a serious "spinal injury" manifesting in numbness in legs).

Second, a prisoner must show that the defendant acted with deliberate indifference to that need. Farrow, 320 F.3d at 1243. To establish deliberate indifference, the plaintiff must demonstrate that the defendant: (1) had subjective knowledge of a risk of serious harm; (2) disregarded the risk; and (3) displayed conduct beyond mere negligence. Id. at 1245–46. Choosing an easier, but less efficacious, course of treatment can also demonstrate deliberate indifference. Waldrop v. Evans, 871 F.2d 1030, 1033 (11th Cir. 1989). However, mere medical malpractice or a difference in medical opinion as to treatment or diagnosis does not constitute deliberate indifference. Id. When a prisoner has received medical attention, courts are reluctant to second-guess medical judgments even if there is a dispute over the adequacy of the treatment. See Harris v. Thigpen, 941 F.2d 1495, 1507 (11th Cir. 1991). Rather, "[m]edical treatment violates the [E]ighth

[A]mendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." Id. at 1505 (quotation marks omitted).

1. Anissa Thomas, CRNP

We reverse the district court's grant of summary judgment to Thomas, because a reasonable jury could find she was deliberately indifferent to Brennan's serious medical needs from November 10 to December 2, 2010. Brennan says that after Thomas reviewed the "normal" x-rays of his spine, shoulder, elbow, and knee on November 10, 2010, she refused to listen to his further complaints about a knot on his neck which was "radiating pain," as well as numbness and spasms through his body. It is undisputed that Thomas never ordered a neck x-ray. Thomas also repeatedly refused to let Brennan see a doctor or a specialist, refused to prescribe him strong pain medication, and refused to physically examine him beyond laying "one finger" on Brennan's neck. On several occasions when Brennan asked for more care, Thomas reacted negatively and ended the consult. Thomas took this course of action even though Brennan's "pain, distress and limited movement were obvious." And Thomas refused further care despite knowing Brennan's long history of musculoskeletal problems; his disability accommodations including a cane, lift shoes, back brace, knee sleeve, and permission to avoid prolonged walking or standing; that Brennan was currently unmedicated for his condition;

and the fact that he did not have a history of drug-seeking behavior. Brennan received no treatment for his condition beyond Tylenol and Motrin for 34 days after his fall, despite complaining of severe pain and limited mobility.

Meanwhile, Thomas asserts she never refused Brennan the opportunity to be seen by a doctor, and that further care was not warranted because Brennan's x-rays were negative for broken bones. Thomas also says she observed "no knot" on Thomas's neck that would require further treatment. She maintains she took a conservative course of pain treatment as a matter of medical judgment.

These two accounts highlight genuine issues of material fact as to whether Thomas disregarded a risk of serious harm to Brennan's health and displayed conduct beyond mere negligence. If Thomas observed a knot on Brennan's neck but yelled at him, denied a neck x-ray to identify the source of the injury, feigned a physical examination, and told Brennan he would "never" receive strong pain medication or see a doctor or specialist, she provided medical care "so inappropriate as to evidence intentional maltreatment or a refusal to provide essential care." See Rogers v. Evans, 792 F.2d 1052, 1058 (11th Cir. 1986); see also Goebert v. Lee County, 510 F.3d 1312, 1328 (11th Cir. 2007) ("Choosing to deliberately disregard, without any investigation or inquiry, everything any inmate says [about his medical needs] amounts to willful blindness."); Hinson v. Edmond, 192 F.3d 1342, 1348 (11th Cir. 1999) (holding a prisoner survived summary

judgment by creating a material issue of fact about whether a doctor "knew of [his] serious medical condition, and, intentionally or with reckless disregard, delayed treatment"). This is especially true since Thomas knew of Brennan's history of musculoskeletal problems, which Brennan said were exacerbated by his fall. See Aldridge v. Montgomery, 753 F.2d 970, 973–74 (11th Cir. 1985) (per curiam) (holding a doctor could display deliberate indifference to a serious medical need if she "refus[ed] even to examine" headaches in a patient she knew had an "extensive history of traumatic blows to the head").

On the other hand, if Thomas never observed a knot, thoroughly examined Brennan's neck, and never told him that strong medication or specialist care was out of the question, her care would more clearly fall within the bounds of the Eighth Amendment as a "classic example of a matter for medical judgment." See Estelle, 429 U.S. at 107, 97 S. Ct. at 293. In light of these material, disputed facts, the district court erred in granting Thomas's motion for summary judgment.

2. Dr. William Talley

Brennan asserts Talley delayed him access to specialist care and denied him appropriate pain medication. The district court properly granted summary judgment to Talley.

First, Talley did not delay Brennan access to specialist care in violation of the Eighth Amendment. It is true that delay in access to medical care that is

tantamount to unnecessary and wanton infliction of pain may constitute deliberate indifference to a prisoner's serious medical needs. Adams, 61 F.3d at 1544. And Brennan did not receive surgery to correct his spinal issues until almost a year after his initial injury. However, the record shows that Talley quickly ordered a neck x-ray on December 10, 2010, then a CT scan of Brennan's neck and lower back on December 20. When the CT scan results returned on January 14, Talley observed Brennan needed a neurosurgical consultation and would probably need surgery, although Talley did not believe Brennan required "emergency medical assistance." Four days after the CT results came in, Talley ordered a neurosurgical consult. On February 8, Talley expressed surprise that Brennan had not yet seen the neurosurgeon and told him he would "look into why" that consultation had not yet happened. On February 22, Talley reported that the neurosurgical consult had been "approved but was not scheduled yet." Brennan eventually saw the neurosurgeon on May 12. Talley believed this wait was typical for an appointment with a well-regarded neurosurgeon. In the second week of June, Talley told Brennan he should see a neurosurgeon within the next 60 days and ordered a neurosurgical consultation request. Brennan saw the neurosurgeon on July 28. Brennan decided on August 7 that he would undergo cervical surgery. On August 15, Talley requested a neurosurgery pre-operation appointment; on August 22,

Talley requested a surgery date. Brennan was initially scheduled to have the surgery on September 12, but moved the date to September 26 due to illness.

Taken in the light most favorable to Brennan, these facts do not show an unreasonable delay in specialist treatment. Although Brennan waited months for surgery, the record shows Talley acted promptly to administer diagnostic tests and schedule consultations with the neurosurgeon. Cf. Hinson, 192 F.3d at 1348–49 (holding a plaintiff survived summary judgment because the date a doctor requested an outside consult was disputed, leaving a 74-day delay in specialist treatment unexplained).

We also agree with the district court that Talley did not violate the Eighth Amendment in his treatment of Brennan's ongoing pain. "A core principle of Eighth Amendment jurisprudence in the area of medical care is that prison officials with knowledge of the need for care may not, by failing to provide care . . . or providing grossly inadequate care, cause a prisoner to needlessly suffer the pain resulting from his or her illness." McElligott v. Foley, 182 F.3d 1248, 1257 (11th Cir. 1999). The record shows that Talley repeatedly met and negotiated with Brennan to meet his pain-management needs, which does not establish subjective indifference. The occasional gap in prescription coverage was merely negligent, since Talley forgot to renew the prescription.

Brennan says Talley canceled his narcotic pain medications beginning on May 16 and through September 26. This gap in medication caused Brennan pain and suffering that he could "no longer endure" and gave him difficulty "walking, sitting, sleeping and eating (due to jaw pain)." Talley did not notify Brennan before tapering the narcotics. Like Thomas, Talley knew of Brennan's ongoing disabilities, that Brennan's pain was not controlled by non-opiate medication for mild to moderate pain, that Brennan's pain would continue to worsen until the surgery, and that Brennan had no history of drug abuse.

However, Talley asserts he made a medical judgment because opioid use is "not suitable for the relief of long-term chronic pain and [is] more suitable for short-term pain relief." Talley says he attempted to prescribe medications that were more suitable to Brennan's long-term pain. The record supports this account. Talley offered Brennan his choice of Tylenol, Motrin, Mobic, Naprosyn, or Voltaren, and listened to Brennan's feedback about the efficacy of the medications. After Brennan fell a second time and reported severe pain and difficulty moving, resting, eating, and sleeping, Talley offered Brennan a wheelchair. Talley also prescribed Brennan opioid pain relief for three nights in July and August so that Brennan "could get some sleep."

Talley's decision to change Brennan's pain-management regimen from opioids to non-opioids was a matter of medical judgment. See Lockett v. Bonson,

937 F.3d 1016, 1024 (7th Cir. 2019) (holding, in Eighth Amendment context, that "[t]he decision to prescribe non-narcotic pain medication was within the bounds of professional judgment"); Brauner v. Coody, 793 F.3d 493, 499 (5th Cir. 2015) (holding no deliberate indifference in denying opioid medication, because a "medical doctor is entitled—obliged, even—to change a patient's prescription in response to suspected misuse"). As a result, we affirm the district court's grant of summary judgment to Talley.

3. Corizon

Corizon, as a private entity that contracts with the state to provide medical services to inmates, is treated as a municipality for purposes of § 1983 claims. See Buckner v. Toro, 116 F.3d 450, 452 (11th Cir. 1997) (per curiam). A municipality can be liable under § 1983 only where the alleged constitutional harm is the result of a custom or policy. Id. at 452–53. "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality," and "[a] custom is a practice that is so settled and permanent that it takes on the force of law." Cooper v. Dillon, 403 F.3d 1208, 1221 (11th Cir. 2005) (quotation marks omitted). "Demonstrating a policy or custom generally requires the plaintiff to show a persistent and wide-spread practice." Goodman v. Kimbrough, 718 F.3d 1325, 1335 (11th Cir. 2013) (quotation marks omitted).

Brennan is correct that Corizon would be prohibited from adopting a policy to limit care in order to cut costs. See Hamm v. DeKalb County, 774 F.2d 1567, 1573–74 (11th Cir. 1985) (holding that state cannot completely deny medical care or provide care "below some minimally adequate level" to "limit[ ] the cost of detention"). But here, Brennan did not show that Corizon had a custom or policy of denying him adequate medical care. Brennan was unable to produce evidence beyond his own assertions of a "persistent and wide-spread practice" that Corizon used to deny him adequate medical care in order to cut costs. See Goodman, 718 F.3d at 1335. As a result, we affirm the judgment of the district court as to Corizon.

4. Colleen Oakes, RN

Finally, we affirm the district court's grant of summary judgment to Oakes. Oakes did not display deliberate indifference to Brennan's condition, because she lacked power to treat Brennan herself, prescribe him medications, or tell other doctors how to treat Brennan. Brennan admits as much in his brief, writing that "Oakes technically cannot tell a doctor what to do." From the record, it appears Oakes was only responsible for managing Brennan's health-related grievances and handling communications within the prison healthcare system. She responded to these complaints and passed on Brennan's grievances. Supervisory and administrative officials such as Oakes are "entitled to rely on medical judgments

made by medical professionals responsible for prisoner care." Williams v. Limestone County, 198 F. App'x 893, 897 (11th Cir. 2006) (per curiam) (unpublished). As a result, the district court correctly granted summary judgment on Brennan's claims against Oakes.

The district court's grant of summary judgment is **AFFIRMED IN PART,** and **REVERSED AND REMANDED IN PART.** Brennan's request for appellate counsel is **DENIED.**