

Opinions for the week of January 13 – January 17, 2020

USA v. William Anthony Dodds No. 19-1135

Argued November 13, 2019 — Decided January 13, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:17-CR-00574(1) — **Manish S. Shah**, *Judge*.
Before BAUER, BRENNAN, and SCUDDER, *Circuit Judges*.

PER CURIAM. William Dodds appeals several conditions of supervised release imposed as part of his sentence for passport fraud, in violation of 18 U.S.C. § 1542. Dodds contends the challenged conditions are either unconstitutionally vague or lack adequate justification. But in the district court, he objected to only one of the proposed conditions and affirmatively waived any challenge to the rest. While the written judgment must be modified to conform one condition to the oral pronouncement, in all other respects it is correct, so we modify the written judgment and affirm the judgment as modified.

Osama Taha v. International Brotherhood of T No. 19-1085

Argued September 19, 2019 — Decided January 13, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-01201 — **Charles P. Kocoras**, *Judge*.
Before SYKES, HAMILTON, and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Federal law imposes a duty on unions to fairly represent all employees in their bargaining units. Osama Taha sued his union, arguing it breached that duty after his employer fired him for abandoning his job. Although the union grieved Taha's firing, he alleges it did so unfairly. He also contends the union wrongfully shut down his grievance process. The district court dismissed Taha's second amended complaint for failure to state a claim, finding it gave no details to support any allegation of unlawful union conduct. Our review compels the same conclusion. Because Taha's complaint fails to state a plausible claim for relief, we affirm.

USA v. Constantino Perales No. 18-3407

Argued January 9, 2020 v Decided January 13, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 888-1 — **Amy J. St. Eve**, *Judge*.
Before DIANE P. WOOD, Chief Judge; FRANK H. EASTERBROOK, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Constantino Perales, a physician, pleaded guilty to conspiring to distribute a controlled substance (oxycodone). As part of the plea agreement he admitted prescribing several other opiates without a bona fide medical reason. He has been sentenced to 144 months' imprisonment. Before being sentenced Perales asked the judge to set aside his plea and hold a trial. The judge denied that motion, finding that Perales had not established a "fair and just reason" (Fed. R. Crim. P. 11(d)(2)(B)) for that step. 2018 U.S. Dist. LEXIS 132122 (N.D. Ill. Aug. 7, 2018). AFFIRMED

Victoria L. Anderson v. Bayer HealthCare Pharmaceutica No. 19-1107

Argued November 6, 2019 — Decided January 14, 2020

Case Type: Civil

Southern District of Illinois. No. 3:10-cv-12145 — **David R. Herndon**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Anderson sued Bayer HealthCare Pharmaceuticals and Bayer Pharma AG in 2010 for injuries caused by the Yasmin birth control pill. At the time, Anderson was represented by Girard Gibbs and Danko Meredith, to whom we will refer collectively as "Gibbs." Anderson and Gibbs entered into a contingency fee agreement that required Anderson to pay Gibbs 40% of her final recovery. Gibbs represented Anderson

for almost four years and helped negotiate a settlement offer of \$176,451.72. Although Anderson was initially willing to accept this offer, Bayer withdrew it when Anderson failed to return an unaltered release form. Gibbs continued to serve as Anderson's counsel after this, but their relationship deteriorated as Anderson became increasingly difficult to represent....Whatever these cases may require when there is only one contingency fee agreement, they do not dictate the application of the arbitrary, last-in-time fee cap that Anderson proposes when there is more than one contingency fee agreement. The district court's task under California law was to reasonably value the services provided by each of Anderson's attorneys. Its methodology accomplished that end, and its order is AFFIRMED.

Barbara Kaiser v. Johnson & Johnson No. 18-2944

Argued May 21, 2019 — Decided January 14, 2020

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 2:17-cv-00114 — **Phillip P. Simon**, *Judge*.
Before FLAUM, KANNE, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. Barbara Kaiser had surgery to implant the Prolift Anterior Pelvic Floor Repair System, a transvaginal mesh medical device that supports the pelvic muscles. Within a few years of her surgery, Kaiser began experiencing severe pelvic pain, bladder spasms, and pain during intercourse. Her physician attributed these conditions to contractions in the mesh of the Prolift. Kaiser had revision surgery to remove the device, but her surgeon could not completely extract it. He informed her that the painful complications she was experiencing were likely permanent. Kaiser sued Ethicon, Inc., Prolift's manufacturer, and Johnson & Johnson, its parent company, seeking damages under the Indiana Products Liability Act, IND. CODE §§ 34-20-1-1 to 34-20-9-1. (Johnson & Johnson has no distinct role in this litigation, so we refer to the defendants collectively as "Ethicon.") After a two-week trial, a jury found Ethicon liable for defectively designing the Prolift device and failing to adequately warn about its complications. The jury awarded a hefty sum: \$10 million in compensatory damages and \$25 million in punitive damages, though the judge granted Ethicon's motion for remittitur and reduced the punitive award to \$10 million....AFFIRMED.

Judy Prater v. Andrew Saul No. 19-2263

Argued December 17, 2019 — Decided January 15, 2020

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:18-cv-00204-WCL-SLC — **William C. Lee**, *Judge*.

Before RIPPLE, SYKES, and ST. EVE, *Circuit Judges*.

PER CURIAM. Judy Prater applied for Social Security Disability Insurance Benefits based on a variety of mental and physical impairments. An administrative law judge denied her application on the ground that her residual functional capacity ("RFC") allows her to perform limited sedentary work, and the district court affirmed. On appeal, Ms. Prater argues only that the RFC assessment is too vague about her need to alternate between sitting and standing. However, because the sit/stand limitation in the RFC assessment specifies that Ms. Prater may change positions as needed so long as she remains in position for at least thirty minutes at a time, we affirm the judgment of the district court.

Kathryn Gillette v. CIR No. 19-1343

Submitted December 19, 2019 — Decided January 15, 2020

Case Type: Tax

Tax Court. No. 16626-15 L — **Ronald L. Buch**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Kathryn Gillette and Raif Szczepanski appeal the tax court's decision upholding a levy to collect their unpaid income taxes from 2012. Because the tax court correctly upheld the petitioners' tax liability and acceptably concluded that the IRS acted within its discretion when it rejected their offer-in-compromise, we affirm.

Carl Gebauer, Jr. v. Andrew M. Saul No. 19-1540

Argued December 18, 2019 — Decided January 17, 2020

Case Type: Civil

Central District of Illinois. No. 2:17-cv-02307-EIL — **Eric I. Long**, *Magistrate Judge*.

Before DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Before her death at the age of 46, Davina Gebauer battled several disorders, including chronic fatigue, fibromyalgia, depression, and interstitial cystitis (bladder pain). Her husband, Carl Gebauer, now challenges the denial of her two applications for disability insurance benefits. See 42 U.S.C. § 405(g). He contends that the administrative law judge improperly relied on a court-appointed medical expert, afforded too little weight to the opinion of Davina's treating physician, misevaluated the severity of Davina's fibromyalgia, and improperly relied on testimony from a vocational expert. We conclude that the ALJ did not commit a legal error and that substantial evidence supports his findings. We therefore affirm the denial of benefits.

USA v. Kevin Ingram No. 19-1403

Argued January 8, 2020 — Decided January 17, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:18-cr-00044-1 — **Tanya Walton Pratt**, *Judge*.

Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges*.

FLAUM, *Circuit Judge*. A federal jury convicted Kevin Ingram of three counts of Hobbs Act robbery (Counts 1–3), one count of attempted Hobbs Act robbery (Count 4), and four counts of possession of a firearm in furtherance of those crimes of violence (Counts 5–8). Ingram now appeals, arguing (1) that there was insufficient evidence on Count 5 for the jury to return a conviction and (2) that his conviction on Count 8 cannot stand because attempted Hobbs Act robbery does not qualify as a crime of violence. For the following reasons, we affirm.

Thomas Censke v. USA No. 18-2695

Argued December 3, 2019 — Decided January 17, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:16-cv-2761 — **Tanya Walton Pratt**, *Judge*.

Before WOOD, Chief Judge, and HAMILTON and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Prisoners face unique challenges when submitting legal filings. Non-prisoners often have access to electronic filing methods and, if not, can take their filings to the post office. But prisoners must use the prison's mail system, where security concerns often cause the system to operate more slowly than standard mail. For legal filings, timing can make all the difference, as it did for Thomas Censke. Censke placed his administrative complaint under the Federal Tort Claims Act in the prison's mailbox with nine days to spare, but the government stamped it as received after the statutory deadline had passed. The question is which date counts—when Censke put it in the mail or when it arrived. The district court held that Censke's claim was not filed until received, so it was untimely. We reverse and hold that the prison-mailbox rule applies to a prisoner's administrative complaint under the Federal Tort Claims Act and so it is filed upon being placed in the prison's mail....In light of our holding that the prison-mailbox rule applies to Censke's administrative claim under the Federal Tort Claims Act, we need not proceed further. Censke's claim was timely filed. Accordingly, we REVERSE and REMAND for further proceedings.

USA v. Zan Morgan No. 18-2671

Argued December 18, 2019 — Decided January 17, 2020

Case Type: Criminal

Western District of Wisconsin. No. 3:17-CR-00062-001 — **James D. Peterson**, *Chief Judge*.

Before DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Zan Morgan pleaded guilty to unlawfully possessing a firearm after police officers discovered a handgun during a traffic stop. The district court increased his base offense level by four levels under § 2K2.1(b)(6)(B) of the Sentencing Guidelines for possessing the firearm “in connection with another felony offense,” namely, drug trafficking. Morgan appeals his sentence, arguing that, in applying the four-level increase, the court used the wrong legal standard and made clearly erroneous factual findings. Because the district court properly found by a preponderance of the evidence that the firearm was connected to drug trafficking, and did not rely on factual errors, we affirm.

Damon Goodloe v. Kul Sood No. 18-1910

Argued October 3, 2019 — Decided January 17, 2020

Case Type: Prisoner

Central District of Illinois. No. 4:16-cv-4062 — **James E. Shadid**, *Judge*.

Before WOOD, Chief Judge, and BARRETT and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Patients are often the best source of information about their medical condition. A physician’s decision to persist with ineffective treatment and ignore a patient’s repeated complaints of unresolved pain and other symptoms can give rise to liability—or, at the very least, raise enough questions to warrant a jury trial. Damon Goodloe’s case is a good example. An inmate in the care of the Illinois Department of Corrections, Goodloe invoked 42 U.S.C. § 1983 and alleged that his treating physician within the Hill Correctional Center responded to his repeated complaints of rectal bleeding and severe pain with a course of demonstrably ineffective treatment and undue delay in sending him to an outside specialist for evaluation. The discovery process revealed medical records and other documents corroborating many of these allegations. On the record before us, then, Goodloe has brought forth enough evidence to put to a jury his Eighth Amendment claim against his treating physician for deliberately indifferent medical care. We therefore reverse the district court’s conclusion to the contrary, while otherwise affirming the entry of summary judgment in all other regards.

Ashlee Henderson v. Kristina Box No. 17-1141

Argued May 22, 2017 — Decided January 17, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:15-cv-00220-TWP-MJD — **Tanya Walton Pratt**, *Judge*.

Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. The district court issued an injunction requiring Indiana to treat children born into female-female marriages as having two female parents, who under the injunction must be listed on the birth certificate. 209 F. Supp. 3d 1059, 1079–80 (S.D. Ind. 2016). Because Indiana lists only two parents on a birth certificate, this effectively prevents the state from treating as a parent the man who provided the sperm, while it requires the identification as parent of one spouse who provided neither sperm nor egg. The judge concluded that this approach is required by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, which as understood in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), oblige governmental bodies to treat same-sex couples identically to opposite-sex couples. Because Indiana lists a husband as a biological parent (when a child is born during a marriage) even if he did not provide sperm, the district judge concluded, it must treat a wife as a parent even if she did not provide an egg....Having expressed these concerns, we must be clear what need not change. The district court’s order requiring Indiana to recognize the children of these plaintiffs as legitimate children, born in wedlock, and to identify both wives in each union as parents, is affirmed. The injunction and declaratory judgment are affirmed to the extent they provide that the presumption in Ind. Code §31-14-7-1(1) violates the Constitution. The remainder of the judgment is vacated, and the case is remanded for proceedings consistent with this opinion.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonia Simpson](#).
