

Opinions for the week of September 12 - September 16, 2016

Marvin Davenport v. Roundpoint Mortgage Servicing No. 16-2181

Submitted September 7, 2016 — Decided September 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 10947 — **Virginia M. Kendall**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Marvin and Judith Davenport defaulted on their mortgage, and their lender brought a foreclosure action against them in state court. The Davenports contested the action, alleging that foreclosure was improper because their lender and loan servicer had engaged in various unfair business practices. The court issued a judgment of foreclosure and eventually approved the judicial sale of the property. The very next day, the Davenports filed this lawsuit in federal court—purportedly on the basis of diversity jurisdiction, see 28 U.S.C. § 1332—in which they reiterated that the mortgage “was based on fraud therefore the foreclosure as well as the mortgage was null and voided.” In addition to damages, the Davenports sought “clear title to their property.” The district court dismissed the suit with prejudice... AFFIRMED.

Matthew Cullen v. Michelle Saddler No. 15-3352

Submitted September 7, 2016 — Decided September 12, 2016

Case Type: Civil

Central District of Illinois. No. 12-1032 — **Sue E. Myerscough**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Matthew Cullen brought suit under 42 U.S.C. § 1983 contending that when he was incarcerated prison officials violated his First Amendment rights by requiring him to participate in a religious substance-abuse program. The district court granted summary judgment for Cullen and ordered the individual defendants to pay \$350 in damages—the amount that Cullen had sought in his complaint. On appeal Cullen argues that the district court erred in dismissing claims against two state agencies, denying his claim for injunctive relief, and awarding him only \$350. We affirm because agencies are not “persons” under § 1983; Cullen, no longer in prison, lacks standing to enjoin the prison’s program; and Cullen waited too long to enlarge his damages request.

Vincent Williams v. Dunbar Armored, Inc. No. 15-2734

Submitted September 7, 2016 — Decided September 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 5281 — **Charles R. Norgle**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Vincent Williams sued Dunbar Armored, Inc., his former employer, alleging that the company had subjected him to a hostile work environment on the basis of his race and sex and that they retaliated against him when he complained by firing him... After Williams filed the suit, he failed to participate in discovery... The court dismissed the case with prejudice; as the court explained, Williams violated the rules of discovery and took no action to move the case forward in nearly a year... DISMISSED.

Lucien McArthur v. Randy Pfister No. 15-2355

Submitted September 7, 2016 — Decided September 12, 2016

Case Type: Prisoner

Central District of Illinois. No. 13-cv-1248 — **Joe Billy McDade**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*.

ORDER

Lucien McArthur, an Illinois inmate, claimed in this suit under 42 U.S.C. § 1983 that a prison physician (and other allegedly complicit defendants) violated the Eighth Amendment by refusing to renew a prescription for orthopedic shoes. The district court granted summary judgment for the defendants, and McArthur appeals... AFFIRMED.

USA v. Charles Tankson No. 14-3787

Argued November 13, 2015 — Decided September 12, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:13-cr-00269-1 — **Edmond E. Chang**, *Judge*.

Before POSNER, RIPPLE, and SYKES, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Following an extensive sting operation by federal law enforcement of a drug distribution ring in Chicago, Charles Tankson was indicted on three counts of distributing 100 grams of heroin and one count of distributing a detectable amount of heroin... The court calculated a guidelines range of 360 months to life but sentenced him below the applicable guidelines range to 228 months' imprisonment. Mr. Tankson now appeals his sentence... we affirm the judgment of the district court.

Dan Davies v. Karlen Benbenek No. 14-2558

Argued December 3, 2015 — Decided September 12, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 CV 0045 — **Joan B. Gottschall**, *Judge*.

Before WOOD, MANION, and HAMILTON, *Circuit Judges*.

MANION, *Circuit Judge*. Plaintiff Dan Davies sued Chicago police officer Karlen Benbenek for using excessive force when responding to a domestic disturbance at Davies' home in the summer of 2010. A trial was held and the jury found for Officer Benbenek. On appeal Davies challenges several of the district court's evidentiary rulings, but his arguments are without merit. Because the evidence challenged by Davies was used for a permissible purpose and was not unduly prejudicial, we affirm the district court's entry of judgment for Officer Benbenek.

William Hinesley, III v. Wendy Knight No. 15-2122

Argued April 13, 2016 — Decided September 13, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-1097-JMS-TAB — **Jane E. Magnus-Stinson**, *Judge*.

Before EASTERBROOK, MANION, and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. Following a bench trial in Indiana state court, William Hinesley, III, was convicted of molesting his 13 year-old former foster daughter, V.V. After exhausting his state court remedies, Hinesley petitioned for a writ of habeas corpus... The district court denied his petition... We AFFIRM the denial of Hinesley's petition for a writ of habeas corpus.

USA v. Andre Williams No. 16-1913

Submitted August 30, 2016 — Decided September 6, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 95 CR 242-6 — **Robert W. Gettleman**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges*.

PER CURIAM. Andre Williams, who has 14 years left to serve in prison (his release is scheduled for 2030, if he earns and retains all good-time credits), asked the district court to revise some conditions that will apply to supervised release once his time in prison ends. The district court declined, deeming the application premature... the judgment is affirmed.

Christopher A. Trentadue v. Julie M. Gay No. 15-3142

Argued February 11, 2016 — Decided September 14, 2016

Case Type: Bankruptcy from District Court

Eastern District of Wisconsin. No. 15-CV-388 — **J.P. Stadtmueller**, *Judge*.

Before RIPPLE, KANNE, and WILLIAMS, *Circuit Judges*.

KANNE, *Circuit Judge*. Plaintiff and debtor Christopher A. Trentadue and his wife divorced in 2007, and as part of that judgment, Trentadue and his then ex-wife received joint legal custody of the couple's six children. This arrangement proved unworkable and resulted in protracted litigation over custody and child support. The Wisconsin state court overseeing the litigation determined that Trentadue's conduct resulted in excessive trial time to resolve the case and awarded Trentadue's ex-wife \$25,000 in attorney's fees for "overtrial." The state court directed Trentadue to make the payment directly to his ex-wife's attorney, Defendant Julie M. Gay. Trentadue never paid Gay. Instead, he filed a chapter 13 bankruptcy petition. Gay countered by filing a \$25,000 claim for the unpaid overtrial award and classified it as a nondischargeable, domestic support obligation entitled to priority. Trentadue objected that the obligation was imposed as a punishment and therefore could not be a domestic support obligation, but the bankruptcy court overruled his objection. The district court agreed with the bankruptcy court after Trentadue challenged its ruling. We find no error and affirm the decision of the district court.

Gloria Sykes v. Cook County Circuit Court Probate Division No. 15-1781

Argued April 5, 2016 — Decided September 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:14-cv-07459 — **John J. Tharp, Jr.**, *Judge*.

Before WOOD, *Chief Judge*, and BAUER and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Gloria Jean Sykes went to her mother's probate proceeding to present a motion and brought her service dog, Shaggy. Instead of letting her present her motion, the judge asked her a series of questions about Shaggy, struck her motion, and entered an order barring Shaggy from the courtroom. Gloria argues that she should be able to bring a lawsuit in federal court for denial of reasonable accommodations under the Americans with Disabilities Act. But because the source of her injury is a state court judgment, we lack subject matter jurisdiction to hear her case.

Timothy Bell v. Eugene McAdory No. 15-1036

Argued January 21, 2016 — Decided September 14, 2016

Case Type: Civil

Central District of Illinois. No. 12-3138-CSB-DGB — **Colin S. Bruce**, *Judge*.
Before RICHARD A. POSNER, *Circuit Judge*;FRANK H. EASTERBROOK, *Circuit Judge*;MICHAEL S.
KANNE, *Circuit Judge*.

ORDER

Our opinion of last April directed the district court to treat post-judgment papers that Timothy Bell had filed there as a motion under Fed. R. App. P. 4(a)(5) for additional time to appeal. The district judge now has done so and, in an order dated September 6, has found that Bell lacks excusable neglect or good cause for not filing a timely appeal.

Donyall White v. Vicki Poore No. 16-1382

Submitted September 7, 2016 — Decided September 15, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:15-cv-01347-TWP-DKL — **Tanya Walton Pratt**,
Judge.

Before DIANE P. WOOD, *Chief Judge*;RICHARD A. POSNER, *Circuit Judge*;FRANK H.
EASTERBROOK, *Circuit Judge*.

ORDER

Donyall White, a prisoner in Indiana, challenges the dismissal of his lawsuit under 42 U.S.C. § 1983 claiming that Vicki Poore was deliberately indifferent to the constant pain in White's feet, ankles, legs, hips, back, and neck. White argues that the district court erred in dismissing his lawsuit solely on the basis of claim preclusion. We agree with White and remand for further proceedings.

Shuntay Antonio Brown v. Carolyn W. Colvin No. 15-3733

Submitted September 7, 2016 — Decided September 15, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15 C 1313 — **Amy J. St. Eve**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*;RICHARD A. POSNER, *Circuit Judge*;FRANK H.
EASTERBROOK, *Circuit Judge*.

ORDER

Shuntay Brown sought judicial review of the denial of his applications for Supplemental Security Income and Disability Insurance Benefits. The district court dismissed the suit without prejudice after concluding that Brown had failed to exhaust his administrative remedies. Brown moved for reconsideration of that determination under Federal Rule of Civil Procedure 60(b), and the court denied the motion. We affirm.

Elliot Carlson v. USA No. 15-2972

Argued February 18, 2016 — Decided September 15, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 9244 — **Rubén Castillo**, *Chief Judge*.

Before WOOD, *Chief Judge*,and KANNE and SYKES, *Circuit Judges*.
SYKES, *Circuit Judge*,dissenting.

WOOD, *Chief Judge*.During World War II, the U.S. Office of War Information warned the populace that "loose lips sink ships."... But what if the ships sailed some 70 years before the tongues wag? That is the problem we face in the present case, in which Elliot Carlson, along with a number of scholarly, journalistic, and historic organizations, seeks access to grand-jury materials sealed decades ago. The materials concern an investigation into the Chicago Tribune in 1942 for a story it published revealing that the U.S. military had cracked Japanese codes. The government concedes that there are no interests

favoring continued secrecy. It nonetheless resists turning over the materials, on the sweeping ground that Rule 6(e) of the Federal Rules of Criminal Procedure entirely eliminates the district court's common-law supervisory authority over the grand jury. It takes the position that no one (as far as we can tell) has the power to release these documents except for one of the reasons enumerated in Rule 6(e)(3)(E). If that is so, then Carlson and his allies must fail, because his request is outside the scope of Rule 6(e). We find nothing in the text of Rule 6(e) (or the criminal rules as a whole) that supports the government's exclusivity theory, and we find much to indicate that it is wrong. In fact, the Rules and their history imply the opposite, which is why every federal court to consider the issue has adopted Carlson's view that a district court's limited inherent power to supervise a grand jury includes the power to unseal grand-jury materials when appropriate. Because the parties agree that this is an appropriate instance (if, in fact, the district court has this power) we affirm the order of the district court.

Darren Gray v. Phil Martin No. 15-3304

Submitted August 26, 2016 — Decided September 16, 2016

Case Type: Prisoner

Southern District of Illinois. No. 14-cv-1418-SMY — **Staci M. Yandle**, *Judge*.

Before DANIEL A. MANION, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Darren Gray brought this suit under 42 U.S.C. § 1983 claiming that medical staff at Lawrence Correctional Center in Illinois were deliberately indifferent in treating his chronic cough and abdominal pain while he was incarcerated there. The district court screened his complaint (which he already had amended once) and dismissed it for failure to state a claim. See 28 U.S.C. § 1915A. We affirm.

Eymarde Lawler v. Peoria School District No. 150 No. 15-2976

Argued July 7, 2016 — Decided September 16, 2016

Case Type: Civil

Central District of Illinois. No. 12-1299 — **James E. Shadid**, *Chief Judge*.

Before WOOD, *Chief Judge*, and BAUER and KANNE, *Circuit Judges*.

PER CURIAM. Eymarde Lawler was diagnosed with post-traumatic stress disorder ("PTSD") at least five years before School District 150 in Peoria, Illinois, hired her to teach students with learning disabilities. For the next nine years Lawler performed that job satisfactorily and was given tenure, and not until 2010, when her psychiatrist concluded that Lawler had suffered a relapse of her PTSD, did District 150 learn about her impairment. After that Lawler was transferred to a different school to teach children with not only learning disabilities but also severe emotional and behavioral disorders. Both Lawler and her supervisor at the new school thought she was ill-prepared for this new role, but District 150 did not relent. After a year in the new position, Lawler was rated as "satisfactory," but then at the start of her second year she was injured by a disruptive student, sending her to the hospital with a concussion and neck injury. Her psychiatrist notified District 150 that this episode and other recent incidents had "retriggered" Lawler's PTSD and that she needed to be transferred to a different teaching environment. District 150 did not transfer Lawler but instead accelerated her next performance appraisal, rated her as un-satisfactory, and fired her as part of an announced reduction in force that ended with all but "unsatisfactory" teachers being rehired. Lawler then filed this action under the Rehabilitation Act of 1973, see 29 U.S.C. § 794, claiming that District 150 not only failed to accommodate her PTSD but also fired her in retaliation for requesting an accommodation. The district court granted summary judgment for the school district, and in this appeal the principal issue is whether a jury reasonably could find, as Lawler says, that the school district failed to accommodate her PTSD. We conclude that a jury could find for Lawler, and thus we vacate the judgment and remand the case for trial.

Debora Ghiselli v. Carolyn Colvin No. 14-2380

Argued February 9, 2015 — Decided September 16, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 13-CV-00354 — **Nancy Joseph**, *Magistrate Judge*.

Before ROVNER and SYKES, *Circuit Judges*, and WOOD, *District Judge*.

WOOD, *District Judge*. Debora Ghiselli applied for disability insurance benefits under the Social Security Act, claiming that she was unable to work due to a combination of health problems that included degenerative disc disease, asthma, and obesity. After her initial application and her request for reconsideration were denied, an administrative law judge (“ALJ”) found that she was not disabled despite her impairments. The district court, reviewing the ALJ’s decision pursuant to 42 U.S.C. § 405(g), held that the decision was supported by substantial evidence and thus affirmed it. Ghiselli has now appealed that ruling to this Court, arguing that the ALJ erred by crediting the opinions of state agency medical consultants over that of her treating physician, by improperly determining without adequate explanation that she had the residual functional capacity to perform a range of light work with limitations, and by finding that she lacked credibility based on certain purportedly inconsistent statements. We agree that the ALJ erred in his consideration of Ghiselli’s credibility and therefore her case must be remanded for further proceedings.

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