

Civil Rights Update

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Objectively Subjective: *Miranda v. County of Lake* and the New Pre-Trial Detainee Medical Care Standard

When a state actor deprives persons of their ability to care for themselves by incarcerating them, detaining them, or involuntarily committing them, it assumes an obligation to provide minimum levels of basic human necessities. Adequate medical treatment is among those necessities.

The Supreme Court first recognized an incarcerated person's right to receive adequate medical treatment in *Estelle v. Gamble*, 429 U.S. 97 (1976), which concerned a convicted prisoner. In that case, the Court concluded that deliberate indifference to a prisoner's serious medical need violates the Eighth Amendment's protection against cruel and unusual punishment. *Id.* at 104-05. An Eighth Amendment claim of deliberate indifference contains an objective and subjective component. The plaintiff must establish facts from which it can be inferred that she had an objectively, sufficiently serious medical need, and that the defendant was subjectively aware of the plaintiff's serious medical need and chose to disregard it. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Under the "deliberate indifference" standard, inadvertent error, negligence, gross negligence or even ordinary malpractice are insufficient to get a case of constitutionally inadequate medical care to a jury.

Although pretrial detainees stand in a different position than convicted prisoners (they have not been convicted of anything and cannot be punished), and their claims arise under the Fourteenth Amendment's Due Process Clause, until recently, courts have assessed pretrial detainees' medical care claims under the Eighth Amendment's standard requiring "deliberate indifference," reasoning that pretrial detainees are entitled to at least that much protection. However, in *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018), the Seventh Circuit redefined the standard for pretrial detainees' medical care claims, following the logic of *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), where the Supreme Court distinguished the Eighth and Fourteenth Amendment standards in an excessive force case.

Discussion

In *Miranda*, a 52-year-old woman was arrested and booked into the Lake County Jail, where she promptly went on a hunger strike and refused to eat or drink. Two days later, a social worker evaluated her, discovered she had not eaten in that time, initiated the hunger strike protocol, and the woman was transferred to the medical unit where she was continuously monitored by staff and placed on suicide watch. *Miranda*, 900 F.3d at 342. The woman was seen by an internist and a psychiatrist. *Id.* at 341-42. These doctors allowed the woman to decline food and water, but warned her repeatedly of the potential consequences associated with a hunger strike. When another internist returned from vacation, he learned the woman had not ingested food or water in five days. He ordered the woman rushed to the hospital where she died of starvation and dehydration. *Id.* at 342.

The woman's estate brought suit against the woman's medical providers, social workers, and others, alleging various claims, including due process claims under the Fourteenth Amendment. Only the claims against the medical providers and social workers went to trial. After the court granted judgment as a matter of law on several claims, the only question remaining for the jury was the Estate's due process claim for inadequate medical care. The jury failed to reach a unanimous verdict regarding the doctors, but held a social worker liable and awarded the Estate \$119,000. The Estate appealed, not challenging the verdict, but taking issue with several aspects of the proceedings below, including the trial court's instruction on the applicable legal standard for a medical care claim brought by pretrial detainees under the Fourteenth Amendment.

On appeal, the Seventh Circuit's decision was framed by the difference that exists between pretrial detainees and convicted prisoners. *Id.* at 350. Under the Eighth Amendment, convicted prisoners can be punished, just not cruelly and unusually so. However, pretrial detainees have not been convicted, and therefore their innocence is presumed, and they cannot be punished at all. *Id.* The court observed that the "deliberate indifference" standard's subjective component is closely linked to the language of the Eighth Amendment, which prohibits the infliction of "cruel and unusual punishments." *Id.* (emphasis in original). The Seventh Circuit acknowledged that, in spite of this, it had typically assessed pretrial detainees' medical care claims under the Eighth Amendment's standards, reasoning that pretrial detainees are entitled to at least that much protection. *Id.* at 350. Both the standards under the Eighth and Fourteenth Amendments required a plaintiff to prove that the plaintiff was suffering from an objectively serious medical need, and the defendant was subjectively aware of that risk of harm and was then deliberately indifferent to that knowledge. However, while the Eighth Amendment applies "deliberate indifference" standard, the Fourteenth Amendment applies a standard of "objective-reasonableness." Recognizing that the Supreme Court had recently disapproved of the uncritical extension of the Eighth Amendment jurisprudence to the pretrial setting in *Kingsley*, and that sister circuits had already weighed in on the debate, the Seventh Circuit analyzed the Fourteenth Amendment standards to determine the proper standard for a medical care claim brought by pretrial detainees.

The Seventh Circuit observed that in *Kingsley*, the Supreme Court held that a pretrial detainee bringing an excessive force claim under the Fourteenth Amendment did not need to prove that the defendant was subjectively aware that the amount of force being used was unreasonable. *Id.* at 351 (citing *Kingsley*, 135 S. Ct. at 2472-73). Rather, the plaintiff needed only to show that the defendant's conduct was *objectively* unreasonable. *Id.*; *Miranda*, 900 F.3d at 351.

The Seventh Circuit then looked to two sister circuits, the Second and the Ninth, where *Kingsley's* rationale had been extended to pretrial detainees' Fourteenth Amendment medical care claims. *Id.* To assuage worry that an objective-reasonableness standard will impermissibly constitutionalize medical malpractice claims, the Seventh Circuit reaffirmed that the state-of-mind requirement for constitutional cases remains higher. *Id.* at 353. The Court observed that under *Kingsley*, a legally requisite state of mind requires a two-step inquiry. *Id.* The first of those inquiries asks whether the defendant acted purposefully, knowingly, or perhaps even recklessly. *Id.* The second step asks as to objectivity. *Id.* at 354.

The Seventh Circuit concluded that medical care claims brought by pretrial detainees under the Fourteenth Amendment are subject only to the objective unreasonableness inquiry identified in *Kingsley*. *Id.* at 353. In other words, the "subjective prong" of a Fourteenth Amendment deliberate indifference claim is defined objectively. Applying this standard to the facts, the court held that a properly instructed jury could have found the doctors acted purposefully, knowingly, or recklessly when they engaged in a course of "wait and see" treatment with knowledge that the course of treatment could result in death, and the Estate was therefore entitled to a trial on this issue. *Id.*



Conclusion

After *Miranda*, the applicable legal standard for a deliberate indifference claim depends on the status of the plaintiff as a pretrial detainee (Fourteenth Amendment) or prisoner (Eighth Amendment). Although *Miranda* changed the “the subjective prong” of a Fourteenth Amendment deliberate indifference claim to an objective unreasonableness standard, it appears that a plaintiff must still prove an objectively serious medical need. While the Seventh Circuit took great pains to show why the new Fourteenth Amendment deliberate indifference standard is not constitutionalizing medical malpractice, the practical differences in proof remain to be seen.

About the Authors

Keith B. Hill is a partner in the Edwardsville office of *Heyl, Royster, Voelker & Allen, P.C.* He has extensive experience advising governmental entity clients with respect to state and federal civil rights law as well as litigating claims brought under state and federal constitutions and other civil rights statutes. Mr. Hill has defended civil rights claims filed by detainees and inmates against correctional health care professionals, sheriffs, correctional officers, and police officers.

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