

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2438

Keith Gary,

Appellant,

v.

Ernie Bear Don't Walk; John Doe; Joe
Cosgrove; Debbie Nelson; David
Corbo; David Crist,

Appellees.

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* Appeal from the United States
* District Court for the
* District of Minnesota.
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* [UNPUBLISHED]
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Submitted: March 1, 2002
Filed: April 1, 2002

Before McMILLIAN, BOWMAN, and BYE, Circuit Judges.

PER CURIAM.

Keith Gary brought this action under 42 U.S.C. § 1983, asserting federal claims for failure to protect him from an inmate assault and denial of physical therapy for his resulting injuries. He also asserted state law claims for assault and negligence. The

district court¹ granted summary judgment in favor of defendants, and declined to address the state law claims. Gary appeals.

Upon our de novo review, see Dulany v. Carnahan, 132 F.3d 1234, 1237 (8th Cir. 1997), we affirm. The evidence before the district court did not present a trialworthy issue on whether defendants consciously disregarded a substantial risk that the assailant would attack Gary. To the extent Gary intended to appeal the denial of his medical-care claim, it fails for lack of evidence that defendants were deliberately indifferent to a serious medical need given that Gary received prompt and continuing medical attention for his injuries, and ultimately was referred for physical therapy.

Accordingly, we affirm. See 8th Cir. R. 47B. However, we clarify that the dismissal of Gary's related state law claims was without prejudice.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable John M. Mason, United States Magistrate Judge for the District of Minnesota.