

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**May 8, 2025**

**Christopher M. Wolpert**  
**Clerk of Court**

PAUL GUEBARA,

Plaintiff - Appellant,

v.

KEVEN BASCUE; MARK WELSH;  
JEFF OREBAUGH; KYLE  
LAWSON; MICHELLE NEWSOME;  
FINNEY COUNTY HEALTH  
DEPARTMENT; HAROLD  
PERKINS; HANNAH DOUTY,

Defendants - Appellees,

GRETCHEN DOWDY,

Defendant.

No. 24-3072  
(D.C. No. 5:19-CV-03025-JAR)  
(D. Kan.)

**ORDER AND JUDGMENT\***

Before **MORITZ, EID**, and **FEDERICO**, Circuit Judges.

\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Paul Guebara filed a pro se 42 U.S.C. § 1983 action asserting that employees of the Finney County Jail (FCJ) and the Finney County Health Department (FCHD) were deliberately indifferent to his serious medical needs by failing to treat his Hepatitis C during the time he was a pretrial detainee at FCJ.

He named the following FCJ employees as defendants: Sheriff Kevin Bascue, Administrator Mark Welch,<sup>1</sup> Captain Jeff Orebaugh, and Lieutenant Kyle Lawson. He also named as defendants the FCHD and the following FCHD employees: Director Harold Perkins, M.D., Advanced Practice Registered Nurse (APRN) Hannah Britt (f/k/a as Hannah Douty), APRN Gretchen Dowdy, and Jail Nurse Michelle Newsome. The district court granted summary judgment in favor of all defendants.

Now represented by counsel, Guebara appeals the district court's decision. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the district court's judgment as to all defendants except Dowdy. Because Dowdy did not appear in the action and was not properly served, we vacate the judgment in her favor and remand for further proceedings.

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<sup>1</sup> Guebara spelled this last name as "Welsh" in his complaint, but defendants use "Welch," as did the district court in its decision, so we will do the same.

## I

Guebara presents only a limited factual statement in his brief, which is taken for the most part from the district court's order granting summary judgment, without separate citations to record evidence. In his factual statement, he mentions only two of the seven individual defendants, even though he alleged all seven were deliberately indifferent to his medical needs. Given these circumstances, we will give only a brief factual overview and discuss additional facts as necessary in considering the conduct of the individual defendants.

Guebara tested positive for Hepatitis C in 2003. He entered the FCJ as a pretrial detainee in 2015, but he did not indicate he had previously tested positive for Hepatitis C. In September 2015, he was experiencing bloating and stomach pain, so Defendant Britt ordered blood work. The test showed he was positive for Hepatitis C. Britt noted in a record that she "would attempt to add a hepatitis panel acute." Aple. Suppl. App. at 176. But that panel was not ordered.

In October 2015, Guebara collapsed and was taken to the emergency room. The hospital physician considered several causes for the collapse, but determined Guebara's Hepatitis C was not likely one of them. The physician noted he would "just monitor [the Hepatitis C] for now." Aplt. App. at 166.

In November 2015, Defendant Newsome spoke with Guebara about his Hepatitis C, but told him he would not receive treatment because the jail would not pay for it.<sup>2</sup>

Hepatitis C can be a chronic condition, and some people can live with it for years without significant symptoms or serious liver damage. While Guebara was in FCJ, he was not exhibiting symptoms indicating an immediate need for Hepatitis C treatment.

Guebara submitted a treatment request form to the FCJ in November 2017, inquiring about a new curative treatment for Hepatitis C. In January 2018, he filed two grievances related to his request for Hepatitis C treatment.<sup>3</sup> But he was not afforded treatment for his Hepatitis C until he

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<sup>2</sup> The only citation Guebara provides for this statement is to the district court's decision, *see* Aplt. Br. at 2, 8 (citing Aplt. App. at 222), but that is not evidence. And we see no citation in that decision as to where the district court obtained this information, *see* Aplt. App. at 222, so we are unable to verify the accuracy of this factual assertion. But defendants do not challenge the evidentiary basis for this statement. *See* Aple. Resp. Br. at 22 (stating that “[Guebara] claims that he was told that cost was a factor in the decision [to deny him treatment at FCJ]” and further stating, “[f]or purposes of this appeal, [Guebara’s] testimony may be accepted as true, but it does not show deliberate indifference”).

<sup>3</sup> Guebara states in his brief that “in the years to come” after 2015, he “repeatedly requested treatment for hepatitis C.” Aplt. Br. at 3 (citing Aplt. App. at 85, 102). Defendants contend this is assertion is incorrect. We agree. Defendants correctly state that Guebara’s citations to the documents in his appendix point to two grievance forms reflecting requests made in January 2018, and the first actual request for treatment in the record dates back only to November 10, 2017.

was convicted and subsequently transferred to a Kansas Department of Corrections (KDOC) facility in 2019. After a few months of treatment at the KDOC facility, Guebara was cured of Hepatitis C.

## II

To establish individual liability under § 1983, a plaintiff must show that a government official, “acting under color of state law, caused the deprivation of a federal right.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). “A prison official’s deliberate indifference to an inmate’s serious medical needs is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.” *Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir. 2005). We have recognized a § 1983 claim for deliberate indifference under the Fourteenth Amendment for pretrial detainees. *Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020).

The deliberate indifference standard involves both an objective and a subjective component. *Mata*, 427 F.3d at 751. The plaintiff “must first produce objective evidence that the deprivation at issue was in fact sufficiently serious.” *Id.* (internal quotation marks omitted). To satisfy the subjective component, the plaintiff must prove the defendant knew of and disregarded “an excessive risk to inmate health or safety.” *Id.* (internal quotation marks omitted). It is the plaintiff’s “burden under § 1983 to establish what each defendant actually did and how that act (or omission)

violated [his] constitutional rights.” *Est. of Beauford v. Mesa Cnty., Colo.*, 35 F.4th 1248, 1273 (10th Cir. 2022).

### III

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “We review a district court’s grant of summary judgment de novo. In doing so, we stand in the same shoes as the district court and must view the factual record and make reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” *Johnson v. Sanders*, 121 F.4th 80, 88 (10th Cir. 2024) (citation and internal quotation marks omitted).

### IV

Guebara asserted deliberate indifference claims against all defendants under § 1983 in both their individual and official capacities. The district court concluded that he failed to show the individual defendants violated his constitutional rights by being deliberately indifferent to his serious medical needs, and this finding in turn precluded a finding that the FCHD could be held liable for the official-capacity claims.

The district court treated Guebara’s claim as a delay in treatment as opposed to a denial of treatment because his Hepatitis C was ultimately cured. The court concluded that Guebara did not satisfy the objective prong

because he failed to show the delay in his treatment resulted in substantial harm. For the subjective prong, it reviewed the evidence against each defendant individually because Guebara needed to prove each defendant was deliberately indifferent to his need for medical treatment to establish a constitutional violation. The court concluded that none of the FCJ or FCHD defendants were deliberately indifferent to Guebara's need for medical treatment.

After the court issued its summary judgment ruling, Guebara moved for reconsideration, arguing that he pled a claim for denial of treatment and the district court erred in treating it as a delay claim. The court did not reconsider whether Guebara met the objective prong for a denial claim, but rather assumed for purposes of its order that he had done so. Moving on to the subjective prong, the district court explained that the same standard applies to delay and denial cases, and it “requires proof that an official knows of and disregards an excessive risk to inmate health or safety.” *Aplt. App.* at 260 (internal quotation marks omitted). Because “the [c]ourt thoroughly analyzed each Defendant’s mental state and concluded that no Defendant knew of and disregarded a serious risk of substantial harm,” that “finding [was] independently sufficient to hold that [Guebara] failed to raise

a genuine dispute of material fact about whether he suffered a violation of his constitutional rights.” *Id.*<sup>4</sup>

## V

Initially, we note that our review of this appeal is hampered due to Guebara’s inadequate briefing of the issues on appeal. He argues there is “essentially no admissible record evidence” to support defendants’ position that they did not provide treatment for Guebara’s Hepatitis C because it was not medically indicated. Aplt. Br. at 5. But he has not shown he objected in district court to the admissibility of the defendants’ evidence that he now challenges on appeal.

“If a litigant believes that an error has occurred (to his detriment) during a federal judicial proceeding, he must object to preserve the issue. If he fails to object in a timely manner, his claim for relief from the error is forfeited.” *Puckett v. United States*, 556 U.S. 129, 134 (2009). We do not consider forfeited arguments on appeal, unless the appellant argues for plain error, which Guebara has not done. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130-31 (10th Cir. 2011). So, we do not consider his argument that defendants’ evidence is inadmissible.

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<sup>4</sup> We too will assume – without deciding – that Guebara met the objective prong and focus our discussion on the district court’s ruling on the subjective prong for each individual defendant.



We also reiterate that “[t]he first task of an appellant is to explain to us why the district court’s decision was wrong.” *Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015). But other than some conclusory assertions, Guebara has “utterly fail[ed] . . . to explain what was wrong with the reasoning that the district court relied on in reaching its decision.” *Id.* He contends “[t]his case concerns an incarcerated plaintiff’s attempts to hold accountable jail officials who refused to provide him treatment for Hepatitis C on non-medical grounds.” Aplt. Br. at 1. And he argues that “[t]he district court improperly resolved fact questions by determining Defendants acted out of good-faith medical judgment when Guebara put forth genuine evidence contesting this conclusion and Defendants put forth essentially no admissible record evidence to support it.” *Id.* at 5. But the district court addressed the evidence on the subjective prong as to each defendant individually – since Guebara needed to show how each individual defendant violated his constitutional rights – and Guebara, for the most part, ignores the district court’s decision.

As in *Nixon*, counsel for Guebara “[r]ecit[es] . . . a tale of apparent injustice,” 784 F.3d at 1366, without tying it to the arguments and evidence Guebara presented in his summary judgment briefing or to the district

court's reasoning.<sup>5</sup> As discussed in more detail below, we affirm the district court's judgment because of these deficiencies and Guebara's failure to show how the district court erred in granting summary judgment in favor of the defendants (with the exception of Dowdy).

## A

We begin with the FCJ defendants: Bascue, Orebaugh, Lawson, and Welch. The district court concluded there was no evidence in the record to raise a genuine issue of material fact that Bascue, Orebaugh, and Lawson knew that Guebara's Hepatitis C (or "Hep-C") presented a substantial risk of serious harm. Indeed, the court explained, Guebara did not offer any evidence that these individuals were even involved with his medical care, beyond responding to grievances. And the court explained that the grievance forms themselves "are insufficient to raise a genuine issue that Bascue, Orebaugh, and Lawson knew that Plaintiff's Hep-C presented any risk at all." *Aplt. App.* at 234. It further explained that "the only evidence in the record of [Welch's] involvement is that he responded to a grievance requesting treatment for Hep-C, and he consulted with FCHD staff who told him that Plaintiff did not need immediate treatment." *Id.* at 233. The court concluded there was "no evidence to support

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<sup>5</sup> In fact, Guebara did not even include in his appendix his response to defendants' summary judgment motions or the attached exhibits.

an inference that Welch knew that Plaintiff's Hep-C was serious, nor that he knowingly disregarded such a risk." *Id.* at 234.

Guebara offers no argument as to how the district court erred in granting summary judgment in favor of Bascue and Orebaugh; in fact, he does not mention these two defendants anywhere in his appeal brief. He has therefore waived any challenge as to the district court's decision in their favor. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) ("Issues not raised in the opening brief are deemed abandoned or waived." (internal quotation marks omitted)).

Due to inadequate briefing, Guebara has also waived any challenge to the district court's decision to grant summary judgment in favor of Lawson and Welch. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005) ("Issues will be deemed waived if they are not adequately briefed." (brackets and internal quotation marks omitted)). He mentions these defendants in only two sentences each. He quotes a passage from each of their affidavits and then questions in one additional sentence what the statements mean or where the defendants received their information. But he does not challenge the district court's reasoning or cite evidence to show a genuine issue of material fact exists as to whether Lawson or Welch were deliberately indifferent to his medical needs.

Guebara has not shown the district court erred in granting summary judgment in favor of any of the FCJ defendants – Bascue, Orebaugh, Lawson, and Welch.

## B

We next turn to the FCHD defendants who appeared in district court – Britt, Perkins, and Newsome.<sup>6</sup> The district court explained that Guebara “was not exhibiting symptoms indicating an immediate need for treatment for Hep-C during the time Britt was involved in his care[,] . . . and without contrary evidence that [he] was exhibiting a need for treatment, there is no genuine issue of fact about whether Britt disregarded a known serious risk to [his] health.” Aplt. App. at 237. The district court next explained there was no evidence “that Perkins was personally involved in Plaintiff’s medical care.” *Id.* But even if Guebara had properly alleged supervisory liability or personal participation, the court concluded “the uncontroverted evidence” showed that Guebara did not exhibit symptoms indicating an immediate need to be treated for Hepatitis C while he was at FCJ, so there was “no evidence in the record to support a finding that Perkins was deliberately indifferent to Guebara’s need for treatment.” *Id.*

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<sup>6</sup> On appeal, Guebara does not challenge the district court’s decision to grant summary judgment in favor of FCHD, so he has waived that issue. *See Sawyers*, 962 F.3d at 1286.

The district court also found Newsome was not deliberately indifferent to Guebara's Hepatitis C diagnosis. The court explained she consulted with APRN Dowdy, who informed her that Guebara's Hepatitis C did not need to be treated at FCJ and it would be better to wait to treat it when he went to a KDOC facility. "Even if cost played a role in Newsome's mind," the court determined there was "no evidence that cost played a role in Dowdy's recommendation that Guebara not be treated immediately." *Id.* at 233. Instead, the evidence showed Newsome followed the medical providers' advice regarding whether Guebara needed treatment for Hepatitis C during his time at FCJ.

Guebara does not point to any record evidence showing a material dispute of fact exists as to whether Britt or Perkins disregarded a known serious risk to his health. Instead, Guebara attacks their affidavits on the basis that they are unsigned. But he ignores the fact defendants later supplemented the record with signed affidavits – a procedure that he did not object to – so the district court properly relied on the affidavits in granting summary judgment.

Guebara also attacks the content of the affidavits for Britt, Perkins, and Newsome. Defendants respond that Guebara withdrew his initial objection to the timing of the submission of the affidavits and later made only conclusory assertions about the affidavits themselves, including that

they were “‘self-serving’ and ‘[c]ontrary to previous claims.’” Aple. Br. at 24 (quoting Aple. Suppl. App. at 220). They contend he never controverted the factual statements within the affidavits with his own evidence. On appeal, Guebara has failed to show where he presented evidence to controvert the statements in the affidavits from Britt, Perkins, and Newsome.

Guebara also argues about the contents of Newsome’s supplemental response to interrogatories, including her reference to the healthcare provider who stated he would just monitor Guebara’s Hepatitis C. Guebara complains that defendants are misrepresenting the significance of the health provider’s statement. While Guebara refers to many instances in which defendants relied on this information, he does not show where in his summary judgment briefing or elsewhere in the record that he raised any objection to this evidence or presented evidence to dispute this statement.

He also challenges Newsome’s reliance on her conversation with Dowdy, suggesting the exchange did not happen. In its summary judgment order, the court found it was reasonable for Newsome to rely on Dowdy’s decision regarding further treatment for Guebara. And the court also rejected Guebara’s challenges to Newsome’s credibility regarding her conversations with FCHD medical staff about Guebara’s Hepatitis C. Although Guebara asserted “there [was] no evidence that these conversations ever took place,” the court explained that Newsome’s affidavit

constitutes evidence, whereas Guebara offered only “bare, self-serving assertions that fail to controvert [her] affidavit[.]” Aplt. App. at 235. Guebara does not address the district court’s reasoning or explain how the court erred in resolving this issue.

Guebara has failed to show the district court erred in granting summary judgment in favor of Britt, Perkins, and Newsome. We discern no error in the district court’s reasoning and affirm the summary judgment granted to these defendants.

### C

Finally, we address the district court’s decision to grant summary judgment in favor of Dowdy. She is another FCHD Defendant, but she did not answer the complaint or otherwise appear in the action. The district court initially entered default against her because she did not respond to the complaint. But it later sua sponte vacated the entry of default. After giving Guebara the opportunity to object, the court also sua sponte entered judgment in Dowdy’s favor based on its grant of summary judgment for the other defendants, despite her lack of an appearance.

Guebara argues the district court abused its discretion when it set aside the entry of default against Dowdy and granted summary judgment in her favor. Guebara asserts that Dowdy “willfully ignored service and failed to appear.” Aplt. Br. at 12. Although Dowdy is not represented by the

attorneys appearing on behalf of the other defendants in this court, defendants contend in response to this assertion, “there is no evidence that Dowdy was ever served with the lawsuit.” Aple. Resp. Br. at 25. The defendants then recount some of the circumstances surrounding the attempt to serve Dowdy. They contend that “[c]onsidering this series of events, this Court should not assume that Gretchen Dowdy was properly served.” *Id.* at 26. After reviewing defendants’ discussion of this issue, the documents submitted in their supplemental appendix, and the district court docket sheet, we conclude there is insufficient evidence to show Dowdy was properly served. As a result, the district court never had personal jurisdiction over her and could not enter judgment in her favor.

As defendants explain, there was an initial service problem with Dowdy and some of the other FCHD Defendants. Because Guebara was proceeding pro se, the court had directed the clerk to have the U.S. Marshals Service (USMS) issue the summons by certified mail. The court ultimately determined that the USMS’s attempts to serve Dowdy by certified mail were insufficient, so it concluded she had not been properly served. Because of the failed certified-mail attempt, the district court directed the USMS to attempt service using FedEx with delivery receipt. The court also directed FCHD to provide the last known home address for Dowdy. FCHD filed a notice stating it had no current mailing address for Dowdy (as she had left



her employment at FCHD four years prior), but it did provide the last known address for her. Then the following happened:

- August 17, 2022 – Summons issued to Dowdy.
- August 30, 2022 – Summons returned executed by FedEx for Dowdy (Doc. 157). The USMS Deputy or Clerk checked the box certifying that she executed the process of serving Dowdy by sending the summons “via FedEx.” Aple. Suppl. App. at 104. The FedEx delivery receipt shows the package was delivered to the address on the summons, but there is no evidence it was received by a person because no signature was obtained. The photo in the FedEx receipt just shows the package by the door. *See id.* at 105.
- October 17, 2022 – Guebara requests entry of default and default judgment against Dowdy.
- November 16, 2022 – The district court directs the Clerk to enter default against Dowdy, saying she was served and did not respond based on the summons-returned-executed document (Doc. 157). *See* Aplt. App. at 56 & n.2. Default is entered.
- November 28, 2022 – An envelope mailed to Dowdy from the court with the order granting entry of default is returned as undeliverable. The envelope was addressed to the same address as the FedEx package with the summons.

We conclude service on Dowdy was not proper under these circumstances. Under Rule 4 of the Federal Rules of Civil Procedure, service on an individual may be effected by following state law for serving a summons in state court, *see* Fed. R. Civ. P. 4(e)(1), or by delivering a copy of the summons to the person individually, leaving a copy at the individual’s dwelling with someone of suitable age who resides there, or delivering a

copy to an agent authorized to receive service of process, *see* Fed. R. Civ. P. 4(e)(2)(A)-(C). Dowdy was not properly served under the federal provisions of Rule 4(e)(2)(A)-(C) – a copy of the summons was not delivered to her individually, left at her dwelling with someone of suitable age (it wasn't left with a person at all), or delivered to an authorized agent.

So, now we look to the Kansas rules of service, *see* Fed. R. Civ. P. 4(e)(1), which are similar to the federal rules. For personal service in Kansas, you have to deliver a copy to the person individually; for residence service, you can leave the copy at the individual's dwelling with someone of suitable age who lives there. *See* Kan. Stat. Ann. § 60-303(d)(1)(A)-(B).

But Kansas does have a service rule that is not in the federal rules. It states: "If personal or residence service cannot be made on an individual, . . . service is effected by leaving a copy of the process and petition or other document at the individual's dwelling or usual place of abode and mailing to the individual by first-class mail, postage prepaid, a notice that the copy has been left at the individual's dwelling or usual place of abode." *Id.* § 60-303(d)(1)(C). This is the only provision that *could* render service proper here. But there is no evidence that the USMS fully complied with the service requirements of § 60-303(d)(1)(C) by mailing to Dowdy a notice that a copy of the summons had been left at the address where the FedEx package was left. Neither the docket nor the default order reflect that such a notice was

mailed. As a result, there is no evidence showing Dowdy was properly served under § 60-303(d)(1)(C).

Because Dowdy was not properly served, the district court lacked personal jurisdiction over her and could not enter a judgment in her favor or against her. *See Okla. Radio Assocs. v. F.D.I.C.*, 969 F.2d 940, 943 (10th Cir. 1992) (“Rule 4 service of process provides the mechanism by which a court having venue and jurisdiction over the subject matter of an action asserts jurisdiction over the person of the party served.”); *Crowley v. Bannister*, 734 F.3d 967, 974-75 (9th Cir. 2013) (“A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4.” (internal quotation marks omitted)); 4 Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 1063 (4th ed. 2008 & Supp. 2024) (“[T]he court must have jurisdiction over the defendant’s person, his property, or the res that is the subject of the suit. A federal court may not proceed to a valid judgment in the absence of this type of jurisdiction . . . .”); *see also Bixler v. Foster*, 596 F.3d 751, 761 (10th Cir. 2010) (“Personal jurisdiction over the defendant is required before a default judgment in a civil case may be entered.”). The district court did not abuse its discretion in vacating the entry of default against Dowdy because she was not properly served. But the court could not grant summary judgment in Dowdy’s favor because it lacked personal jurisdiction over her.

## VI

Accordingly, we affirm the district court's judgment as to all defendants, except Dowdy. As to Dowdy, we affirm the district court's order vacating the entry of default against her. But we vacate the portion of the district court's order granting judgment in Dowdy's favor, and remand with instructions for the district court to dismiss the action without prejudice against her or order that service be made within a specified time, *see* Fed. R. Civ. P. 4(m).

Entered for the Court

Richard E.N. Federico  
Circuit Judge