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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DWAYNE GREENE, Deceased,

Plaintiff,

CHERYL GREENE, Personal Representative of the Estate of Dwayne Greene, Deceased,

Plaintiff-Appellee/Cross-Appellant,
Plaintiff-Appellant (20-1741),

v.

CRAWFORD COUNTY, MICHIGAN; RANDELL BAERLOCHER; RENEE CHRISTMAN; KATIE TESSNER; TIMOTHY STEPHAN; AMY JOHNSON; ESTATE OF KIRK WAKEFIELD, Deceased,

Defendants-Appellants/Cross-Appellees,

NORTHERN LAKES COMMUNITY MENTAL HEALTH AUTHORITY; NANCI KARCZEWSI; STACEY KAMINSKI; LARRY FOSTER; DALE SUITER; DONALD STEFFES; WILLIAM SBONEK; JOEL AVALOS; DAVID NIELSON; SHON CHMIELEWSKI,

Defendants-Appellees (20-1741).

Nos. 20-1715/1741

Appeal from the United States District Court for the Eastern District of Michigan at Bay City.
No. 1:18-cv-11008—Thomas L. Ludington, District Judge.

Argued: December 8, 2021

Decided and Filed: January 4, 2022

Before: McKEAGUE, GRIFFIN, and KETHLEDGE, Circuit Judges.

COUNSEL

ARGUED: Christopher J. Raiti, MCGRAW MORRIS P.C., Troy, Michigan, for all Defendants. Sima G. Patel, FIEGER, FIEGER, KENNEY & HARRINGTON, P.C., Southfield, Michigan, for Plaintiff. **ON BRIEF:** Christopher J. Raiti, G. Gus Morris, MCGRAW MORRIS P.C., Troy, Michigan, for all Defendants. Sima G. Patel, FIEGER, FIEGER, KENNEY & HARRINGTON, P.C., Southfield, Michigan, for Plaintiff.

OPINION

McKEAGUE, Circuit Judge. Dwayne Greene was booked into the Crawford County Jail on a Monday afternoon after having his bond revoked for attending a plea hearing while intoxicated. Over the next few days, Greene began hallucinating and exhibiting other symptoms of delirium tremens, a life-threatening complication of alcohol withdrawal that we have long recognized is an objectively serious medical need. *See Kindl v. City of Berkley*, 798 F.3d 391, 401 (6th Cir. 2015). On Friday morning, Greene suffered acute respiratory failure. He died four days later. Crawford County officials did not provide any medical care to Greene prior to his incapacitation. Instead, they sought only a mental health evaluation from the Northern Lakes Community Mental Health Authority and purportedly relied on that evaluation in deciding not to seek medical assistance.

Greene's estate filed this suit under 42 U.S.C. § 1983, claiming that several jail officials were deliberately indifferent to Greene's medical need and that Crawford County is liable for maintaining an unconstitutional policy of not providing medical care to inmates suffering from delirium tremens. The estate also brought the same claims against the mental health authority and its employees. The district court denied qualified immunity at summary judgment to some of the county officials and denied summary judgment to Crawford County on the estate's municipal-liability claim. The county officials and Crawford County bring this interlocutory appeal, and the estate cross-appeals. For the following reasons, we affirm in part, reverse in part, and dismiss for lack of appellate jurisdiction Crawford County's appeal on the estate's municipal-liability claim.

I.

A. Delirium Tremens

Delirium tremens "is a life-threatening condition caused by acute alcohol withdrawal." *Kindl*, 798 F.3d at 401. A person experiencing delirium tremens will typically show agitation, hallucinations, and disorientation. Delirium tremens occurs in roughly 5% of patients undergoing alcohol withdrawal and "usually appears 2 to 4 days after the patient's last use of alcohol." *Id.* at 3. According to the estate's experts, the mortality rate among patients who do not receive medical intervention could be as high as 35% and as low as 5%. Roughly "1 to 4% of hospitalized patients with [delirium tremens] die," but "this rate could be reduced if an appropriate and timely diagnosis were made and symptoms were adequately treated." Marc Schuckit, *Recognition and Management of Withdrawal Delirium (Delirium Tremens)*, 371 New Eng. J. Med. 2109, 2110 (2014).

Treatment for delirium tremens is best "carried out in a locked inpatient ward or an ICU." *Id.* at 2111. The "best approach to the management of [delirium tremens] includes a careful physical examination and appropriate blood tests to identify and treat medical problems that may have contributed to the severe withdrawal state." *Id.* Treatment should include providing "supportive care by monitoring vital signs frequently (e.g., every 15-30 min) in a quiet, well-lit room. Reorient[ing] patient to time, place, and person . . . [and] [p]rovid[ing] medications to control agitation, promote sleep, and raise the seizure threshold." *Id.* at 2112. Specific medication treatment may consist of intravenous administration of fluids and benzodiazepines.

B. The Crawford County Jail and its Practices Regarding Inmate Alcohol Withdrawal

The Crawford County Jail in Grayling, Michigan is operated by a sheriff, an undersheriff, and a jail administrator. Two corporals work underneath the jail administrator, who supervise the corrections officers.

Defendant Randell Baerlocher, the jail administrator, is responsible (along with the sheriff and undersheriff) for implementing policies and procedures promulgated by the jail. The jail has a written policy that says that "qualified licensed healthcare professionals shall determine

all medical matters of the Crawford County Jail." The jail contracts for a part-time nurse to be on-site Tuesdays and Fridays. The jail may also take inmates offsite to see a nurse practitioner or a doctor. All officers on duty are authorized to call a nurse without seeking permission from a supervisor.

According to Baerlocher, inmates experiencing alcohol withdrawal is an "everyday occurrence" in the Crawford County Jail. R. 59-7 at 41. The jail requires anyone coming into the jail at a .30 blood alcohol content or above to go to the hospital. But the jail's practice for anyone undergoing alcohol withdrawal who is not at a .30 is "observation" without medical referral. *Id.* at 17. Sheriff Wakefield testified that it was the jail's custom and practice for persons undergoing alcohol withdrawal to remain in the observation area without medical intervention until they could see the jail nurse. *Id.* at 12. Corporal Renee Christman testified that, in her experience, hallucinations were "normal behavior" for someone going through a "de-tox situation." R. 66-16 at 52. Corporal Katie Tessner testified that 911 has not been called regarding an inmate experiencing alcohol withdrawal during her nine years of employment with the jail.

In October of 2017, seven weeks prior to Greene's detainment at the Crawford County Jail, Baerlocher required his entire department (himself included) to attend a training session conducted by the Northern Lakes Community Mental Health Authority titled "First Aid for Mental Health Crisis." R. 66-22 at 45–48. That training session included a packet given to attendees. That packet had a page regarding alcohol withdrawal, which stated: "SEVERE ALCOHOL WITHDRAWAL MAY LEAD TO A MEDICAL EMERGENCY. Seek medical help if the person displays symptoms of severe alcohol withdrawal, such as . . . Delirium tremens (a state of confusion and visual hallucinations)." R. 66-6 at 2. Crawford County did not have any written policies or procedures on recognizing the signs and symptoms of alcohol withdrawal or delirium tremens.

C. Northern Lakes Community Mental Health Authority

The Crawford County Jail has a contract with Defendant Northern Lakes Community Mental Health Authority ("CMH") to provide mental health services for inmates. CMH was

established pursuant to an agreement between several counties in northern Michigan. CMH is "its own governmental entity separate from the counties that established it." R. 115 at 5807. It has contract with the Michigan Department of Health and Humans Services to provide mental health services to CMH's region of the state.

The services CMH provides to the Crawford County jail fall into two categories: ongoing treatment and crisis services. When the jail submits a referral to CMH for an individual not receiving ongoing treatment, that request falls under the category of crisis services. *Id.* When a crisis services counselor reports to the jail to evaluate an inmate, her role is to assess the inmate's "risk of harm to self or others." R. 66-15 at 35; R. 66-33 at 33.

Sheriff Wakefield understood that the agreement between CMH and Crawford County was for "mental health," and understood that CMH employees were not "healthcare professional[s]." R. 66-24 at 15. Captain Baerlocher testified that that the jail sometimes used CMH's evaluation to determine whether the inmate is experiencing a medical issue or a mental health issue. If CMH determined that the inmate is not suffering from a mental issue, the jail went "in a different direction[.]" R. 59-7 at 76. Baerlocher also testified that they have used CMH as a "resource" to help the jail identify inmate medical problems but that using CMH for such a purpose was not consistent with the jail's written healthcare policy. *Id.* at 76–77. CMH's corporate representative acknowledged that it can be challenging to tell the difference between a mental health symptom and a symptom of alcohol withdrawal.

D. Greene's Detainment at Crawford County Jail and Death from Delirium Tremens

1. December 4, 2017 – Monday

On December 4, 2017, Dwayne Greene appeared in Crawford County Circuit Court to enter a guilty plea. The judge was informed that Greene had been drinking alcohol that day and ordered Greene to submit to a breath test. Greene blew a .194, despite having been at the courthouse for 3–4 hours prior to the hearing. The judge revoked Greene's bond and ordered him detained. Greene's attorney explained to the judge that Greene "has tried to [quit] alcohol on his own before, and he's had seizures. He will get violently ill in the jail going cold turkey." R. 59-5 at 12. There is no evidence that this statement was conveyed to any officer at the jail.

Greene was booked into the Crawford County Jail later that afternoon. Corporal Tessner was on duty that day. She did not complete the full booking process, which normally included a medical screening questionnaire, because Greene had come from a bond revocation; Tessner assumed that Greene would bond out again. Tessner had completed a prior booking of Greene on August 6, 2017. Greene booked into the jail on that date with a BAC of .210. Based on this prior booking, Tessner suspected on December 4 that Greene would experience alcohol withdrawal in the jail. Tessner understood that Greene needed to be kept in observation until he could be seen by "medical staff." R. 59-2 at 21. She indicated that the "jail nurse" would be the professional in charge of supervising withdrawal from alcohol at jail. *Id.* at 11. But by the time Greene came to the jail on December 4, the nurse had already left. Tessner knew that a nurse would not be back to the jail until Friday, December 8. While a nurse ordinarily reported to the jail on Tuesdays and Fridays, the schedule changed that week to Monday and Friday because a new nurse was undergoing orientation. So, Tessner knew that "barring anything unforeseen[,]" Greene would not see receive medical attention until Friday. *Id.* at 22.

2. December 5, 2017 – Tuesday

Greene remained in an observation cell during his time at the jail. The jail video logs did not document any activity from Greene on Monday, December 4 or Tuesday, December 5. Tessner observed on December 5 that Greene's hands were shaking but did not observe Greene experience any hallucinations. Greene did not receive medical attention on December 5. Tessner was not scheduled to return to duty until the morning on Friday, December 8.

3. December 6, 2017 – Wednesday

Greene's conditioned worsened on Wednesday. His deterioration was documented in the jail video logs. Around 6:20 a.m., Corporal Christman recorded that Greene was "acting erratic, appearing to be hellu-cinating [sic], and to be detoxing." R. 117 at 18; R. 59-13. Captain Baerlocher saw Greene putting his hands down the drain, and "standing and pushing on the wall" of his cell talking about a crack on the ceiling. R. 59-7 at 39. Baerlocher inferred that Greene was exhibiting signs of withdrawal from alcohol.

An inmate in an adjacent cell testified that, on the night of December 6 going into December 7, Greene screamed, was "extremely mad, [and] pounded on things all night long," and that he "got in [an imaginary] gunfight" around 2:00 or 3:00 a.m. R. 66-39 at 9. Greene also "got in a big fight with his parents." *Id.* The inmate stated that an officer spent five minutes trying to get Greene to settle down and sleep, but that Greene went back to banging on things in his cell "all night long." *Id.* at 11. Another inmate testified that Greene was "completely out of it" and that he was attempting to free people from "out of the puke tank" in the middle of the cell. R. 66-40 at 9. Officer Larry Foster was present when this occurred. Greene did not receive medical attention on December 6.

4. December 7, 2017 – Thursday

Around 4:30 a.m., Officer Foster, who was near the end of his overnight shift, made a request for an evaluation from CMH because he observed Greene "having a conversation with the wall." R. 66-54 at 15–16. He told a superior that he was "not used to seeing someone de-tox[ ] like this." *Id.* at 14. Foster knew that Greene was withdrawing from alcohol but believed that Greene also had a mental health condition because he had never witnessed someone hallucinating like Greene. He testified that "[i]n the past if [CMH] was called for something like this they would come in and if they felt there was a medical need they would immediately contact for a medical need." *Id.* at 84.

Greene's condition did not improve throughout the day. At 6:20 a.m., Corporal Christman recorded in the log:

> "Inmate Dwayne Greene is still showing signs that he is still going through withdrawels form [sic] alcohol. He has tried to leave the cell, asking for hammer and nails, thinking his mother is speaking to him, he periodically yells out or bangs door, floor and walls. He is compliant and pleasant when speaking to him, but is confused and does not comprehend that he is here in the jail. We will continue to monitor him closely."

R. 59-13. Christman saw the CMH request from Foster and had "either myself or one of the other officers call CMH to come in." R. 66-16 at 25. Her concern was "that if this was not just from de-toxing I didn't want him to hurt himself or somebody else." *Id.* The following recordings were then made in the log about Greene:

- **7:13 a.m.:** "[Corporal Christman] talking to Greene trying to get him to lay down and sleep, still trying to get out of cell." R. 59-13.
- **7:24 a.m.:** "Greene still hyper and agitated[.]" *Id.*
- **9:47 a.m.:** "Greene still has not slept. Still slightly agitated, he was moved to D01 for cell D02 to be cleaned. He complied and is not as loud as before." *Id.*
- **12:09 p.m.:** "Greene, Dwayne in D01 refused his lunch." *Id.*

At 2:11 p.m., Defendant Nanci Karczewski from CMH reported to the jail to evaluate Greene. Karczewski is a limited license professional counselor. Her role, as a crisis services worker, was to evaluate Greene's "risk of harm to self or others." R. 66-15 at 35; R. 66-33 at 33. Karczewski performed her evaluation of Greene and wrote in handwriting: "He is delusional while experiencing alcohol withdrawal. Dwayne admits to significant alcolism [sic] so is struggling w/ DT's. Does not appear to be risk to himself." R. 66-14. She also wrote in a typewritten report that Greene was "not oriented to place or time" and that his "[t]houghts were delusional and disorganized as well as being illogical." *Id.* She noted that it was "very difficult [to assess Greene] due to his delusional behavior while going through the DTs." *Id.* She recognized that Greene was experiencing delirium tremens and used the abbreviation DT's to mean "delirium tremens," but the County Defendants interpreted "DT's" mean "detox." *See* R. 66-14; R. 66-15 at 49–51. Karczewski was not trained on the medical treatment needed for an individual suffering from delirium tremens. She did not attend the mental health first aid training that CMH offered to the County Defendants in October of 2017 because that was not a training provided to CMH staff.

Karczewski did not encourage the jail to seek medical help for Greene. She assumed when leaving the jail that Crawford County would handle Greene's medical needs. CMH's corporate representative testified that, had she been in Karczewski's shoes and known that Greene was experiencing alcohol withdrawal, she would have recommended immediate medical attention.

Following Karczewski's visit, Christman believed that Greene would be fine because "Nanci had no issues in her mind and she knew that the nurse was coming in the next day[.]" R. 66-16 at 91. But she does not recall whether Karczewski told her that Greene could wait until

the next day to see a nurse. On the evening of December 7, Christman texted Corporal Tessner (who was scheduled to work the following morning) about Greene: "Greene is still going through the d.t.'s. has not slept nor ate much. Hallucinations. Etc. Cmh seen and spoke to him. She said he is showing classic signs of withdrawal. Hopefully by the time you're there he will have decided to sleep. He has been monitored closely." *Id.* at 19; R. 66-14. She used the abbreviation "DTs" to mean "detoxing" and not "delirium tremens." R. 66-16 at 19. Christman testified that she would not have called for medical help unless Greene started experiencing a seizure.

Baerlocher also talked with Karczewski after her evaluation. He testified that Karczewski told him that Greene's delusions were "the result of alcohol withdrawal . . . and not mental." R. 59-7 at 106. Baerlocher was at "ease" because "she felt he was okay[.]" *Id.* It is unclear whether Karczewski's purported message to Baerlocher that Greene was "okay" referred to his medical condition or his risk of self-harm. Speaking of himself and Karczewski, Baerlocher acknowledged that "none of us were medical people." *Id.* But he claimed that the jail had a "pattern" of relying on "a mental health professional for an opinion related to medical care[.]" *Id.* at 108.

Greene did not receive medical attention on Thursday, December 7. At this point, Greene had been in the jail for three days and had not received any basic medical care. He had not seen a medical professional, had not received any medication, had not had his blood pressure, temperature, or any vitals checked, had not received an IV, and had not been offered any fluids beyond water.

5. December 8, 2017 – Friday

On the morning of December 8, Corporal Tessner reported to work around 6:00 a.m. Officers Suiter and Foster, who had worked the overnight shift, reported to Tessner that Greene had not slept during their shift. Tessner knew from Christman's text the night before that Greene had also not slept on the day shift the previous day. She was also told that overnight Greene had "balled up his blanket and sweatshirt and he believed that to be his pack and that he was going to walk to Traverse City." R. 66-11 at 52. At 7:38 a.m., prior to the nurse coming in, Officer Joel

Avalos found Greene unresponsive in his cell. Avalos performed CPR on Greene and Tessner called 911. Greene was transported to the hospital, which diagnosed him with "acute respiratory failure and severe cerebral anoxia." R. 66-38. Greene survived on a ventilator until December 12 when his family decided to take him off life support.

E. Procedural History

Plaintiff Cheryl Greene, representative of Greene's estate, filed this suit against Crawford County and individual County Defendants Sheriff Wakefield, Captain Baerlocher, Corporal Christman, Corporal Tessner, Corrections Officers Amy Johnson, Timothy Stephan, Larry Foster, Dale Suiter, Donald Steffes, Joel Avalos, and others. The estate also filed claims against CMH and its employees Karczewski and Stacey Kaminski (Karczewski's supervisor). The Amended Complaint asserts claims under 42 U.S.C. § 1983 for deliberate indifference and failure to intervene against individual defendants, and for municipal liability against Crawford County and CMH. It also asserts a claim for gross negligence under Michigan law.

The County Defendants and the CMH Defendants separately moved for summary judgment on the estate's claims. The district court granted summary judgment on all claims to CMH and the individual CMH Defendants. The court also granted summary judgment to Officers Foster, Suiter, Steffes, Avalos, and Nielson, holding that those defendants were entitled to qualified immunity. The court denied summary judgment to Captain Baerlocher, Corporal Christman, Corporal Tessner, Officer Stephan, Officer Johnson, and Sheriff Wakefield's Estate,[1] and denied summary judgment to Crawford County on the estate's claim for municipal liability. These defendants now appeal the denial of qualified immunity at summary judgment. Crawford County appeals the denial of summary judgment on the estate's municipal-liability claim. And the estate cross-appeals the grant of summary judgment to Defendants Foster, Suiter, Steffes, Avalos, Karczewski, and CMH.

[1]The district court denied summary judgment to the Estate of Sheriff Wakefield, noting that "Sheriff Wakefield's estate did not offer a rationale for why summary judgment should be granted. Sheriff Wakefield was identified by name in the factual allegations of Count I of the complaint and as such, the claim remains against him." R. 117 at 38. County Defendants do not raise any argument on appeal specific to Sheriff Wakefield.

II.

We ordinarily have jurisdiction to review only final orders from the district court. 28 U.S.C. § 1291. And "'when a district court grants summary judgment on some but not all claims' in a lawsuit, 'the decision is not a final order for appellate purposes.'" *Carpenter v. Liberty Ins. Corp.*, 850 F. App'x 351, 353 (6th Cir. 2021) (quoting *Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 500 (6th Cir. 2012)). However, certain exceptions exist to this general rule. Two of those exceptions apply here.

County Defendants' appeal. We have jurisdiction to review a district court's denial of qualified immunity. 28 U.S.C. § 1291; *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). But our review is limited to "only purely legal questions." *McGrew v. Duncan*, 937 F.3d 664, 669 (6th Cir. 2019). Thus, we have jurisdiction over legal questions raised by the individual County Defendants' appeal from the denial of qualified immunity at summary judgment.

The estate's cross-appeal. "[U]nder Federal Rule of Civil Procedure 54(b), the district court may certify a partial grant of summary judgment for immediate appeal if the court 'expressly determines that there is no just reason for delay.'" *Carpenter*, 850 F. App'x at 353 (citing Fed. R. Civ. P. 54(b)). "Proper certification under Rule 54(b) is a two-step process." *Planned Parenthood*, 696 F.3d at 500. First, the district court must "expressly direct the entry of final judgment as to one or more but fewer than all the claims or parties in a case." *Id.* (citation and quotations omitted). Second, "the district court must expressly determine that there is no just reason to delay appellate review." *Id.* (citation omitted). Here, the district court's thorough Rule 54(b) certification order complied with this two-step process. The court certified (1) the grant of CMH Defendants' Motion for Summary Judgment on the merits, and (2) the grant of qualified immunity to County Defendants Foster, Suiter, Steffes, Avalos, and three others not at issue on appeal. Thus, we have jurisdiction over the estate's cross-appeal.

III.

We review a district court's denial of summary judgment based on qualified immunity de novo, viewing the facts in the light most favorable to the non-movant. *Foster v. Patrick*, 806 F.3d 883, 886 (6th Cir. 2015) (citation omitted). The same standard applies when reviewing the

grant of summary judgment. *Hunt v. Sycamore Cmty. Sch. Dist. Bd. of Educ.*, 542 F.3d 529, 534 (6th Cir. 2008). Applying this standard, we evaluate the appeals and cross-appeals on the estate's claims for (a) deliberate indifference, (b) failure to intervene, (c) municipal liability, and (d) state-law gross negligence.

A. Deliberate Indifference

1. Standard

The Eighth Amendment prohibits "cruel and unusual punishments[.]" U.S. Const. amend. VIII. This protection "includes a right to be free from deliberate indifference to an inmate's serious medical needs." *Brawner v. Scott Cnty., Tennessee*, 14 F.4th 585, 591 (6th Cir. 2021) (citing *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018)). But the Eighth Amendment does not apply to pretrial detainees like Greene. *Graham ex rel. Est. of Graham v. County of Washtenaw*, 358 F.3d 377, 382 n.3 (6th Cir. 2004). Instead, pretrial detainees have a constitutional right to be free from deliberate indifference to serious medical needs under the Due Process Clause of the Fourteenth Amendment. *Griffith v. Franklin Cnty., Kentucky*, 975 F.3d 554, 566 (6th Cir. 2020). The Supreme Court has recognized that "due process rights to medical care 'are at least as great as the Eighth Amendment protections available to a convicted prisoner.'" *Id.* (quoting *City of Revere v. Mass Gen. Hosp.*, 463 U.S. 239, 244 (1983)).

Until recently, this Court "analyzed Fourteenth Amendment pretrial detainee claims and Eighth Amendment prisoner claims 'under the same rubric.'" *Brawner*, 14 F.4th at 591 (citation omitted). The Eighth-Amendment framework for deliberate indifference claims has an objective and a subjective component. *Griffith*, 975 F.3d at 567; *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). "The objective component requires a plaintiff to prove that the alleged deprivation of medical care was serious enough to violate the [Constitution]." *Griffith*, 975 F.3d at 567 (quoting *Rhinehart v. Scutt*, 894 F.3d 721, 737 (6th Cir. 2018)). The subjective component requires a plaintiff to show that "each defendant subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk by failing to take reasonable measures to abate it." *Id.* at 568 (quoting

Rhinehart, 894 F.3d at 738). This is a high standard of culpability, "equivalent to criminal recklessness." *Id.*

This court's opinion in *Brawner* changed things. In that case—decided after the briefing in this case was completed—the plaintiff argued that the Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), "eliminate[d] the subjective element of a pretrial detainee's deliberate-indifference claim." *Brawner*, 14 F.4th at 591. In *Kingsley*, the Supreme Court addressed the standard for excessive force claims brought by pretrial detainees under the Due Process Clause of the Fourteenth Amendment as compared to excessive force claims brought by convicted prisoners under the Cruel and Unusual Punishments Clause of the Eighth Amendment. 576 U.S. at 400. Specifically, the Court was asked to determine "whether, to prove an excessive force claim, a pretrial detainee must show that the officers were *subjectively* aware that their use of force was unreasonable, or only that the officers' use of that force was *objectively* unreasonable." *Id.* at 391–92. The Court answered that the proper standard was objective. *Id.* In reaching that answer, the Court focused in part on the differences between the Due Process Clause and the Cruel and Unusual Punishments Clause. *Id.* at 400 ("The language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all[.]"). But the Court did not "address whether an objective standard applies in other Fourteenth Amendment pretrial-detainment contexts[,]" such as the claim at issue here: deliberate indifference. *Brawner*, 14 F.4th at 592.

Brawner answered the question that *Kingsley* left open. The majority opinion concluded that *Kingsley*'s reasoning required "modification of the subjective prong of the deliberate-indifference test for pretrial detainees." *Id.* at 596 ("Given *Kingsley*'s clear delineation between claims brought by convicted prisoners under the Eighth Amendment and claims brought by pretrial detainees under the Fourteenth Amendment, applying the same analysis to these constitutionally distinct groups is no longer tenable."); *accord Darnell v. Pineiro*, 849 F.3d 17, 34–35 (2d Cir. 2017); *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. County of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018); *but see Cope v. Cogdill*, 3 F.4th 198, 207 & n.7 (5th Cir. 2021); *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018);

Dang by & through Dang v. Sheriff, Seminole Cnty., 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Strain v. Regalado*, 977 F.3d 984, 991 (10th Cir. 2020).

Brawner modified the second prong of the deliberate indifference test applied to pretrial detainees to require only recklessness: "A pretrial detainee must prove 'more than negligence but less than subjective intent—something akin to reckless disregard.'" *Brawner*, 14 F.4th at 597 (6th Cir. 2021) (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)). In other words, a plaintiff must prove that the defendant acted "deliberately (not accidentally), [and] also recklessly in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known." *Id.* (citation and quotation marks omitted).

Judge Readler dissented in part from the *Brawner* majority. He wrote that, "because resolving the *Kingsley* question [was] not essential to support [the] judgment, the majority opinion's conclusion on the issue is not [a] holding." *Brawner*, 14 F.4th at 604 (Readler, J., concurring in part and dissenting in part). Whether *Brawner*'s extension of *Kingsley* to deliberate indifference claims was a holding—and not mere dictum—is important for today's case because, "[l]ike most circuits, this circuit follows the rule that the holding of a published panel opinion binds all later panels unless overruled or abrogated en banc or by the Supreme Court." *Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). A "conclusion that does nothing to determine the outcome is dictum and has no binding force" on a future panel. *Id.* at 701.

Counsel for County Defendants urged us at oral argument to interpret *Brawner*'s extension of *Kingsley* as non-binding dictum and to apply the traditional subjective standard. Oral Arg. 0:55–2:20. We decline to take that interpretation of *Brawner*. The *Brawner* majority expressly considered and rejected the suggestion that its extension of *Kingsley* was dictum. *Brawner*, 14 F.4th at 592. Although it concluded that the facts "support[ed] a finding of deliberate indifference under either" the Eighth-Amendment subjective standard or *Kingsley*'s modified objective standard, it reasoned that "deciding the issue [was] necessary so the jury can be properly instructed on remand" and that there were "no statutory or alternative grounds on which to decide this case." *Id.* at 592 n.2. We are bound by that decision. *See Brawner v. Scott*

Cnty., Tennessee, 18 F.4th 551 (6th Cir. 2021) (order denying petition for en banc rehearing); *Wright*, 939 F.3d at 700.

2. Analysis

To survive summary judgment on a deliberate indifference claim, a plaintiff must "present evidence from which a reasonable jury could find that (1) that [the detainee] had an objectively serious medical need; and (2) that [the defendant's] action (or lack of action) was intentional (not accidental) and she either (a) acted intentionally to ignore [the detainee's] serious medical need, or (b) recklessly failed to act reasonably to mitigate the risk the serious medical need posed to" the detainee. *Brawner*, 14 F.4th at 597.

a. Objectively serious medical need

A serious medical need is one "that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008). We have recognized (and the defendants do not dispute) that delirium tremens is an objectively serious medical need. *Kindl*, 798 F.3d at 402 ("delirium tremens is a severe form of alcohol withdrawal and is unquestionably a serious medical condition within the meaning of the Fourteenth Amendment."). The district court found that Greene did not begin exhibiting symptoms of delirium tremens until December 6, 2017—two days after he entered the Crawford County Jail, and two days before he became incapacitated. This finding is not disputed on appeal.

b. Reckless disregard of serious medical need

At the second prong, because we cannot "impute knowledge from one defendant to another[,]" we must "evaluate each defendant individually[.]" *Speers v. County of Berrien*, 196 F. App'x 390, 394 (6th Cir. 2006). The district court, applying the subjective standard applicable at the time of its decision, denied summary judgment to County Defendants Baerlocher, Christman, Tessner, Stephan, and Johnson, concluding that there were genuine disputes of fact on whether those defendants were deliberately indifferent. It granted summary judgment to County Defendants Foster, Steffes, Suiter, and Avalos (and others not at issue on this appeal)

finding that there were no genuine disputes of fact. It also granted summary judgment to CMH Defendant Karczewski. We affirm as to all defendants but Foster.

While we must analyze each defendant individually, we first address a common argument raised by County Defendants. They argue that they were not deliberately indifferent because they acted reasonably in relying on Karczewski's evaluation of Greene and her decision not to seek medical attention.

In the Eighth Amendment context, "prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844. Consistent with this principle, we have recognized that a "non-medically trained officer does not act with deliberate indifference to an inmate's medical needs when he 'reasonably deferred to the medical professionals' opinions.'" *McGaw v. Sevier Cnty., Tennessee*, 715 F. App'x 495, 498 (6th Cir. 2017) (citing *Johnson v. Doughty*, 433 F.3d 1001, 1010 (7th Cir. 2006)). In *McGaw*, a man turned himself into the county jail around 10:30 p.m. *Id.* at 496. He arrived visibly intoxicated and told his booking officers that he had consumed vodka and prescription opiates. *Id.* The corrections officers immediately summoned a jailhouse nurse. *Id.* The nurse told the officers that the inmate could be kept in his cell overnight for monitoring. *Id.* Around 1:00 a.m., officers noticed that the inmate was unresponsive in his cell having suffered cardiac arrest. *Id.* He was transported to the hospital where he remained in a coma until his death. *Id.* His estate argued that the officers were deliberately indifferent by leaving the inmate in an observation cell without medical treatment, despite knowing of his intoxication. *Id.* We disagreed. *Id.* We reasoned that it was "clear in retrospect that [the nurse's] recommendation should have been for the [the inmate] to be taken to the hospital," but "the officers had no reason to know or believe that [the nurse's] recommendation was inappropriate, and thus did not act with subjective deliberate indifference when they followed it." *Id.* Even if the nurse was not sufficiently trained to diagnose the inmate, when "an officer responds to a substantial risk of serious harm by asking for and following the advice of a professional the officer believes to be capable of assessing and addressing that risk, then the officer commits no act of deliberate indifference in adhering to that advice." *Id.* at 498–99.

County Defendants argue that, like the defendants in *McGaw* who reasonably relied on the nurse's mistaken evaluation, they were not deliberately indifferent because they reasonably relied on Karczewski's evaluation that Greene was not at risk of self-harm and her decision not to recommend medical treatment. But the situation in *McGaw* was much different. County Defendants cannot be said to have "reasonably deferred to [a] medical professional['s] opinion" if they had actual knowledge Karczewski was not a medical professional and that she was called to the jail to perform a mental health assessment of Greene, not a medical one. *McGaw*, 715 F. App'x at 498. The record is filled with genuine disputes on that point.

Even setting aside whether County Defendants' reliance on Karczewski's mental health assessment was or was not reasonable at the time of her evaluation, a jury could find that Greene was in "obvious" need of *some* medical attention in the hours following Karczewski's evaluation. *Brawner*, 14 F.4th at 597. Greene had not slept in over 24 hours prior to his incapacitation and continued to suffer from severe hallucinations after Karczewski's evaluation. County Defendants nonetheless failed to seek any basic medical assistance. *Cf. Strain v. Regalado*, 977 F.3d 984, 994 (10th Cir. 2020), *cert. denied*, 142 S. Ct. 312, 211 L. Ed. 2d 147 (2021) ("To begin with, [nursing] staff admitted Mr. Pratt to the Jail's medical unit the day he complained of alcohol withdrawal symptoms.").

At a certain point, bare minimum observation ceases to be constitutionally adequate. *See, e.g.*, *Preyor v. City of Ferndale*, 248 F. App'x 636, 644 (6th Cir. 2007) ("If [officers] knew that [the inmate] was detoxing from heroin . . . then a reasonable jury could find that simply granting [him] opportunities to relieve himself would amount to a disregard of his condition."). At what point that occurred in this case will be for the jury to determine. Viewing the record in the light most favorable to the estate, a jury could find that Baerlocher, Christman, Tessner, Stephan, Johnson, and Foster "recklessly failed to act with reasonable care" in failing to render or seek any basic medical assistance for Greene while he continued to suffer from delirium tremens following Karczewski's mental health evaluation. *Brawner*, 14 F.4th at 597 (citations omitted).

i. Captain Baerlocher

The district court correctly concluded that there are genuine disputes of fact regarding whether Baerlocher was deliberately indifferent. In October 2017, two months before Greene's stay at the Crawford County Jail, Baerlocher attended the mental health first aid training session that informed attendees that "delirium tremens" is a "state of confusion and visual hallucinations." R. 66-22 at 45–48. After Greene was booked into the jail, but before the jail contacted CMH for an evaluation, Baerlocher witnessed Greene sticking his hand down the drain and pushing on the wall of his cell. He believed Greene to be going through alcohol withdrawal, not a mental health crisis. He understood the jail's policy that "qualified licensed healthcare professional shall determine all medical matters of the Crawford County Jail[.]" *Id.* at 58. He knew that the jail did not have an agreement with CMH to provide medical services. And he knew that Karczewski was not a medical professional. *Id.* at 59.

Karczewski told Baerlocher around 4:00 p.m. on December 7 that Greene was experiencing "alcohol withdrawal" and that his delusional thoughts and hallucinations were not the result of a mental health episode. *Id.* at 106. When speaking of Karczewski and his fellow officers, Baerlocher admitted that "[n]one of us were medical people." *Id.* And he knew that Karczewski evaluated Greene for risk of self-harm. Still, Baerlocher never sought any basic medical assistance for Greene. He testified that his subordinates told him that Greene was "progressing" prior to December 7, but Corporal Christman testified that, over December 6 and December 7, Greene began hallucinating more, and that she is "sure" she discussed Greene's worsening hallucinations with Baerlocher. R. 66-16 at 52. These facts create a genuine dispute regarding whether Baerlocher recklessly failed to act reasonably to mitigate a serious risk of harm to Greene. *Brawner*, 14 F.4th at 597.

ii. Corporal Christman

Christman was on duty and observed Greene on December 6 and 7, the period during which Greene began exhibiting worsening symptoms of delirium tremens. She observed Greene being agitated and having auditory and visual hallucinations throughout those two days. She did not attend the CMH mental health first aid training that included the material on the symptoms of

delirium tremens, unlike the other County Defendants. She was not provided any other training to recognize the signs of delirium tremens. In her experience, hallucinations were "normal behavior" for someone going through a "de-tox situation." *Id.* at 52. Nonetheless, there are still enough facts in the record from which a jury could conclude that Christman "recklessly failed to act reasonably to mitigate the risk the serious medical need posed to" the detainee. *Brawner,* 14 F.4th at 597.

On the evening of December 7, after Karczewski's mental health evaluation, Christman texted Corporal Tessner: "Greene is still going through the d.t.'s. has not slept nor ate much. Hallucinations. Etc. Cmh seen and spoke to him. She said he is showing classic signs of withdrawal. Hopefully by the time you're there he will have decided to sleep. He has been monitored closely." *Id.* at 19; R. 66-14. Although she allegedly used the phrase "DTs" to mean "detoxing" and not "delirium tremens," *see* R. 66-16 at 19, these texts illustrate that Christman knew after Karczewski's evaluation on the afternoon of December 7 that Greene was experiencing a medical issue, not a mental health one. She also knew that Karczewski was not a medical professional and that CMH was a mental health organization. Indeed, Christman recognized that Greene needed to be seen by the jail nurse, but she decided to wait for the nurse to arrive on the following morning instead of seeking immediate medical attention. And she testified that she would not have called for any medical help for Greene unless he began experiencing a seizure.

A jury could find that Greene's need for immediate medical attention was "known or so obvious that it should [have been] known to Christman" by the end of her shift on Thursday, December 7 and that Christman recklessly failed to act reasonably by not seeking medical assistance for Greene. *Brawner*, 14 F.4th at 596. (6th Cir. 2021).

iii. Corporal Tessner

Tessner booked Greene into jail on December 4. She observed Greene on December 5, but she did not work on December 6 or 7 when Greene began experiencing symptoms of delirium tremens. Although she did not work on December 6 or 7, Tessner received the text from Christman on the evening of December 7 informing her that Greene had not slept that day,

was hallucinating, and that he had been evaluated by CMH. Tessner arrived for her shift around 6:00 a.m. on Friday, December 8 with knowledge of Greene's condition from Christman's text message. When Tessner arrived at the jail, she was informed that Greene had not slept during the overnight shift from the December 7 to December 8. She was also told that Greene had "balled up his blanket and sweatshirt and he believed that to be his pack and that he was going to walk to Traverse City." R. 66-11 at 52.

Tessner also attended the CMH mental health first aid training two months prior to Greene's stay at the jail. She was informed that alcohol withdrawal needed to be done under professional supervision. And she considered professional supervision to mean the "jail nurse"—not CMH. Furthermore, she acknowledged that she understood that CMH is not a medical provider and that CMH is used to evaluate inmates for their risk of harm to self or others, typically in cases where the inmate appears suicidal. And she testified that in the past she has "not relied on [CMH]" for medical opinions but that they "have recommended[.]" *Id.* at 80. This evidence creates a genuine dispute on whether Tessner recklessly disregarded Greene's medical need by failing to seek medical assistance for Greene after she arrived for her shift on December 8. Although she was only on duty for roughly 90 minutes prior to Greene collapsing, she knew that Greene's condition had not improved overnight as he continued to hallucinate, that Greene had not slept for at least 24 hours, and that Greene had yet to receive any basic medical attention in his now four days at the jail. Despite this knowledge, she did not seek medical assistance for Greene.

Indeed, this Court has denied qualified immunity to a shift supervisor who failed to seek medical assistance in the final moments of a detainee suffering from delirium tremens in a situation of obvious medical need. *Smith*, 505 F. App'x at 534. In that case, a detainee was booked into the county jail around 5:00 p.m. on a Friday. *Id.* at 529. The jail's medical director saw the detainee that night. *Id.* She noted that the detainee was an alcoholic and prescribed her Librium. *Id.* Over Saturday and Sunday, the detainee began "singing, pounding on the walls, and talking to relatives who were not present." *Id.* On Sunday night, the jail called an off-site doctor and explained that the detainee was going through severe hallucinations. *Id.* at 530. The doctor explained that the detainee was on medication and that the nurse would see the detainee

the next day. *Id.* The following morning, a defendant shift commander observed the detainee "on her buttocks and knees with her upper torso resting on the cell's bench." *Id.* The officer "briskly" offered water to the detainee and did not check her vital signs. *Id.* He ordered a subordinate to monitor the inmate every 15 minutes. *Id.* An hour later, the detainee became unresponsive, and officers summoned paramedics. *Id.*

The shift commander asserted qualified immunity, arguing that he "reasonably responded to [the detainee's] medical needs by ordering that she be monitored. He also knew that she was receiving medications for her medical problems and that she had been resting more quietly over the past few hours than she had during the previous day." *Id.* at 535. Still, we held that he was not entitled to qualified immunity. *Id.* Even though he knew that the detainee was on medication and being monitored, he "encountered [her] in her last hour" and was "on notice that she was very ill and yet did nothing to make sure that [she] had not taken a turn for the worse." *Id.*

Here, Tessner did not observe Greene in a near-lifeless state like officer in *Smith* observed. However, worse than the officer in *Smith*, Tessner knew on December 8 that Greene had not received any medication—or any basic medical assistance—in four days. Given the information about Greene's condition of which Tessner had actual knowledge, a jury could infer that she was "on notice that [Greene] was very ill" on the morning of December 8 "and yet did nothing to make sure that [Greene] had not taken a turn for the worse." *Id.* at 535.

iv. Officer Stephan

Officer Stephan worked from 6:00 a.m. to 6:00 p.m. on both December 6 and 7. He did not recall much during his deposition. But he admitted that he would have witnessed Greene acting erratic and hallucinating based on what was written in the video logs Christman authored during his shift. He also entered Greene's cell with Baerlocher and Christman to check on Greene when Greene stuck his hand down the cell drain.

Stephan was also present during and after Karczewski's mental health evaluation. He testified that he understood after Karczewski's evaluation that Greene was experiencing alcohol withdrawal. He also understood that CMH was a mental health provider and that CMH was not

authorized to provide medical care. Furthermore, Stephan attended the CMH mental health first aid training and acknowledged that he was in possession of the information from the training prior to Greene's stay at the jail. Thus, for the same reasons discussed above, there are genuine dispute on whether Stephan recklessly failed to act reasonably to mitigate the risk of harm posed to Greene by not seeking medical aid for Greene at any time during his shifts, especially after Karczewski's evaluation confirmed that Greene was not experiencing a mental health incident.

v. Officer Johnson

Officer Johnson is in a similar situation as Officer Stephan. Johnson worked on December 6 and December 7 and observed Greene's hallucinations. Johnson attended the CMH mental health first aid training in October and acknowledged that she was in possession of the information regarding delirium tremens prior to her encounters with Greene. She admitted that she was concerned on December 7 because Greene was not eating. Prior to Karczewski's evaluation, she believed Greene to be exhibiting the signs of a "mental health episode more than anything else." R. 66-17 at 46. But after Karczewski's evaluation, she knew that Greene was experiencing "DTs"—which she understood to mean "de-tox." *Id.* She acknowledged that it would be important for Greene to receive medical attention "when the nurse came in[.]" *Id.* at 48. Thus, she knew that Greene needed medical assistance—and at that point had not received medical aid in over 3 days—but nonetheless chose not to seek medical aid for Greene. Therefore, there are genuine disputes of fact regarding whether Johnson was deliberately indifferent.

vi. Officer Foster

Foster presents the closest call. The district court granted Foster's motion for summary judgment. The estate cross-appeals. The district court reasoned that the evidence showed that Foster was aware of a risk of harm to Greene, but that there were no genuine disputes of fact on whether Foster disregarded that risk because Foster told a superior about Greene's abnormal behavior and requested help from CMH on the morning of December 7.

Although Foster requested help from CMH early on December 7, a jury could still find that Foster recklessly failed to seek medical assistance for Greene the following night when he

observed Greene after CMH's evaluation. Foster worked the night shift on December 6 into December 7. Foster observed Greene's hallucinations and told a supervising officer that he was "not used to seeing someone detoxing like this[.]" R. 66-54 at 14–15. Around 4:30 a.m. on December 7, just prior to the end of his shift, Foster made a request for a CMH evaluation after observing Greene's behavior and believing that he was experiencing a mental health episode in conjunction with alcohol withdrawal. Foster's shift ended and he was not present during the day on December 7 when Karczewski performed her evaluation.

Foster returned on the evening of December 7 to work the night shift. Foster read Karczewski's evaluation when he came to work on December 7. He testified that he was aware at that point that Greene's symptoms were the result of alcohol withdrawal and not a mental health incident. But he had a "cloudy" understanding of Karczewski's role and "assumed that" CMH would help with medical treatment because they had "[i]n the past." *Id.* at 83.

Foster then saw Greene continue to hallucinate that night; he reported to Corporal Tessner in the morning on December 8 that Greene "balled up his blanket and sweatshirt and he believed that to be his pack and that he was going to walk to Traverse City." R. 66-11 at 52. Officer Suiter testified that Foster "talked to [Greene] quite a bit" that night and "had a little bit of rapport going with the guy[.]" R. 59-19 at 17. Foster also did not observe Greene sleep at all during his 12-hour shift. That is notable because Foster testified that, although he did not work on December 7 during the day shift, he was aware from the video logs that Greene "still ha[d] not slept" and that he refused his lunch. R. 59-13. A reasonable jury could infer from this evidence that Foster knew Greene had not slept in over 24 hours and that Foster had observed Greene's condition deteriorate given his continued hallucinations. What's more, unlike the other Defendants, Foster also had training as an EMT. He testified that he had taken blood pressure and temperature readings from inmates in the past. He was the only corrections officer he knew of at the jail with training as an EMT. Despite his training, and despite his knowledge of Greene's condition, he did not seek medical assistance for Greene on the night of December 7 or morning of December 8. Based on these facts, even though Foster sought help from CMH in the morning on December 7, a jury could find that Foster recklessly disregarded Greene's medical

need by not seeking any medical help or rendering any medical aid to Greene the following day. *Brawner*, 14 F.4th at 597.

vii. Officers Suiter, Steffes, and Avalos

The estate cross-appeals the district court's grant of summary judgment to Defendant Officers Suiter, Steffes, and Avalos.

Suiter. Officer Suiter worked the night shift on December 7 to December 8 with Officer Foster. He did not have any information about Greene prior to that shift. When he came in for his shift in the evening, he testified that he did not review the jail log from the previous shift. He was not aware that Greene had not slept at all on the 7th prior to his shift. He testified that Christman informed him at shift turnover that CMH had evaluated Greene and that Greene would see a nurse the next morning. He testified that he does not recall Greene sleeping and that Greene was "[u]p moving around the cell the whole time, pacing back and forth[.]" R. 59-19 at 17. He claims that he did not observe Greene hallucinate, but Tessner testified that Officer Suiter and Foster informed her about Greene's Traverse City hallucination on the morning of December 8. Suiter testified that he had little interaction with Greene because Foster handled Greene that night. Even drawing all reasonable inferences in the light most favorable to the estate, this evidence is insufficient to show that Suiter recklessly disregarded Greene's medical needs. *Brawner*, 14 F.4th at 597. Suiter did not have the same level of knowledge of Greene's condition as the defendants discussed above. His failure to do more to assist Greene can at most be characterized as negligence.

Steffes. The district court correctly granted summary judgment to Officer Steffes. Steffes worked an overtime shift from December 6 at 11:41 p.m. to December 7 at 6:04 a.m. Steffes cleaned Greene's observation cell around 5:00 a.m. because he had "possibly urinated on the cell door." R. 59-12 at 36. He knew prior to the end of his shift that Foster filled out a request CMH to evaluate Greene, but he was not present on the 7th after Karczewski's evaluation or on the 8th. This evidence is insufficient to conclude that Steffes recklessly disregarded a known or obvious risk to Greene. *See Brawner*, 14 F.4th at 596.

Avalos. The district court also correctly granted summary judgment to Officer Avalos. Avalos worked on December 4 and 5, and on the morning of December 8 just prior to Greene's incapacitation. As the district court noted, Greene's behavior was not abnormal on the December 4 and 5, his first two days in the jail when Avalos was present. The estate does not point to sufficient evidence from which a jury could find that Avalos actually became aware of the seriousness of Greene's condition, or that Greene's condition would have been obvious to Avalos, in the 90 minutes Avalos was at the jail prior to Greene's incapacitation. Avalos also rendered CPR to Greene immediately upon learning from Tessner that Greene had become unresponsive. Avalos is entitled to summary judgment.

viii. CMH Defendant Karczewski

The district court granted summary judgment in favor of CMH Defendant Nanci Karczewski, concluding that there were no genuine disputes of fact and that Karczewski not deliberately indifferent. We affirm.

Karczewski is a limited license professional counselor, not a medical professional. The record is clear that CMH provides mental health services for the Crawford County Jail, not medical services. Her role in evaluating inmates at the jail is limited to assessing "risk of harm to self or others." R. 66-15 at 35; R. 66-33 at 33. Karczewski performed her evaluation of Greene and noted that he was "struggling w/ DTs" but that he "[did] not appear to be risk to himself." R. 66-14. Karczewski did not have knowledge of and did not receive any training on the medical treatment needed for an individual suffering from delirium tremens. And Baerlocher acknowledged that when CMH determines that an inmate is suffering from a medical issue and not a mental health one, the jail "takes a different direction." R. 66-23 at 76.

With the benefit of hindsight, it is easy to say that Karczewski should have encouraged the jail to call for immediate medical assistance. But Karczewski "performed [her] duties. That [she] did not take the extra step of bringing the need for more aggressive intervention to [the jail], that failure at most . . . amounts only to negligence." *Smith*, 505 F. App'x at 536. And evidence of "[m]ere negligence is insufficient" to survive summary judgment on a deliberate indifference claim. *Brawner*, 14 F.4th at 596. Karczewski evaluated Greene's risk of self-harm

and placed the jail officials on notice that Greene was not experiencing a mental health crisis. Even viewing the facts in the light most favorable to the estate, Karczewski was not deliberately indifferent.

c. Qualified immunity

Because several County Defendants are not entitled to summary judgment on the estate's deliberate indifference claim, "we must also address the issue of qualified immunity." *Richmond v. Huq*, 885 F.3d 928, 947 (6th Cir. 2018). And because "there is sufficient evidence for a jury to conclude that" these defendants were deliberately indifferent to Greene's medical needs, "the only remaining question is whether the right was clearly established." *Burwell v. City of Lansing, Michigan*, 7 F.4th 456, 476 (6th Cir. 2021) (citing *Richmond*, 885 F.3d at 947). County Defendants argue that they are entitled to qualified immunity because it was not clearly established that they could not rely on mental healthcare providers like CMH to assess the medical condition of an inmate experiencing severe alcohol withdrawal and delirium tremens.

For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* (citation omitted). The "unlawfulness must be apparent . . . in the light of pre-existing law," but "[w]e need not . . . find a case in which the very action in question has previously been held unlawful." *Burwell*, 7 F.4th at 476–77 (internal citations and quotations omitted).

"As early as 1972, we stated that 'where the circumstances are clearly sufficient to indicate the need of medical attention for injury or illness, the denial of such aid constitutes the deprivation of constitutional due process.'" *Id.* at 477 (citing *Est. of Carter v. City of Detroit*, 408 F.3d 305, 312 (6th Cir. 2005)). Furthermore, we reiterated in 2013 that "[i]t is clearly established that a prisoner has a right not to have his known, serious medical needs disregarded by . . . a medical provider or [an] officer." *Id.* (citations omitted). It is well established in this circuit that delirium tremens is an objectively serious medical need. *Kindl*, 798 F.3d at 401 (6th Cir. 2015); *Smith*, 505 F. App'x at 533; *Speers*, 196 F. App'x at 394 ("Expert testimony showed that delirium tremens, if untreated, is often fatal—which assuredly makes it a 'serious' medical condition."). As discussed earlier, we have denied qualified immunity to an officer who failed to

seek medical assistance for an individual suffering from delirium tremens in a situation of obvious illness even when the officer knew that the detainee was on withdrawal medication and being observed. *Smith*, 505 F. App'x at 535.

No case answers the precise question of whether it is reasonable to rely on a *mental health* professional to provide a *medical* assessment of a detainee exhibiting symptoms of delirium tremens. But to ask that question is to answer it. In the end, Greene experienced a clearly established life-threatening medical condition for at least two days prior to his incapacitation. County Defendants did not provide *any* medical assistance during that time. Greene's right not to have "known, serious medical needs disregarded by" County Defendants was clearly established in this scenario. *Burwell*, 7 F.4th at 476.

In sum, we (1) affirm the denial of qualified immunity at summary judgment to County Defendants Baerlocher, Christman, Tessner, Stephan, and Johnson; (2) reverse the grant of summary judgment in favor of Foster; and (3) affirm the grant of summary judgment in favor of County Defendants Suiter, Steffes, Avalos, and CMH Defendant Karczewski.

B. Failure to Intervene

The estate asserts claims under § 1983 against the individual Defendants for failure to intervene to prevent a violation of Greene's constitutional rights to be free from deliberate indifference. R. 46 at 25. The district court denied summary judgment to Defendants Baerlocher, Christman, Tessner, Stephan, and Johnson. Those Defendants appeal. To succeed on a claim for failure to intervene, a plaintiff must show that there was an "underlying constitutional violation." *Bonner-Turner v. City of Ecorse*, 627 F. App'x 400, 413 (6th Cir. 2015). County Defendants again raise only the cursory argument that "because they are all entitled to qualified immunity and summary judgment on [the estate's] underlying [deliberate indifference] claim[,]" they are also entitled to summary judgment on the estate's failure to intervene claim. First Br. at 28. This argument fails for the reasons discussed above, so we affirm the denial of qualified immunity to County Defendants on this claim.

C. Municipal Liability

The estate also brings a claim for municipal liability against both Crawford County and CMH. "A municipality is a 'person' under 42 U.S.C. § 1983, and so can be held liable for constitutional injuries for which it is responsible." *Morgan v. Fairfield Cnty.*, 903 F.3d 553, 565 (6th Cir. 2018) (citing *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978)). A municipality cannot be liable under a theory of *respondeat superior*; it can only be held liable for "its own wrongdoing." *Id.* Relevant here, a municipality can be liable for "harms caused by the implementation of municipal policies or customs," and "harms caused by employees for whom the municipality has failed to provide adequate training." *Id.* (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986)); *Garner v. Memphis Police Dep't*, 8 F.3d 358, 364 (6th Cir. 1993); *Arrington-Bey v. City of Bedford Heights*, 858 F.3d 988, 995 (6th Cir. 2017)).

The estate advances a "policy or custom" claim against the County and a failure-to-train claim against CMH. The district court denied summary judgment to Crawford County on this claim and granted summary judgment in favor of CMH. Crawford County appeals the denial of summary judgment, and the estate cross-appeals the grant of summary judgment to CMH. We dismiss Crawford County's appeal for lack of appellate jurisdiction and affirm the district court's grant of summary judgment in favor of CMH.

1. Crawford County

The district court's Rule 54(b) certification did not certify the denial of summary judgment on this claim as a final judgment. Because a denial of summary judgment is not a final decision, the "denial of a motion for summary judgment is not an appealable order." *McGaw*, 715 F. App'x at 499 (citing *Kindl*, 798 F.3d at 405). "[W]here the question of a municipality's liability is coterminous with a determination of an officer's qualified immunity, a court may exercise pendent jurisdiction over the former claim in the course of an appeal of the latter." *Id.* As discussed above, there are genuine disputes of fact on the estate's underlying deliberate indifference claim as to several individual defendants. We therefore decline to exercise pendent appellate jurisdiction over Crawford County's interlocutory appeal.

2. CMH

The district court granted summary judgment in favor of CMH on the estate's *Monell* claim. Plaintiff appeals, arguing that CMH "promulgated an unconstitutional custom and policy of not training its employees to seek medical attention for inmates suffering a readily apparent serious medical need." Second Br. at 61. "To establish municipal liability for a failure to train, a plaintiff must show (1) the training program is inadequate to the task the officer must perform, (2) the inadequacy is a result of the municipality's deliberate indifference, and (3) the inadequacy is "closely related to" or "actually caused" the plaintiff's injury. *Bonner-Turner*, 627 F. App'x at 413–14 (quoting *Plinton v. County of Summit*, 540 F.3d 459, 464 (6th Cir. 2008)). "To show deliberate indifference, a plaintiff 'must show prior instances of unconstitutional conduct demonstrating that the [municipality] has ignored a history of abuse and was clearly on notice that the training in this particular area was deficient and likely to cause injury.'" *Id.* at 414 (citation and internal quotations omitted).

We agree with the district court that, "[e]ven if [CMH] were considered a municipality for purposes of a *Monell* claim," there is no evidence of a "policy that resulted in any alleged violation of Mr. Greene's constitutional right to be free from deliberate indifference." R. 117 at 49. CMH contracted with the Crawford County Jail to provide mental health services. Even if the estate was correct that CMH should have trained its employees to seek medical care for inmates experiencing withdrawal or delirium tremens, it points to no evidence of "prior instances of unconstitutional conduct" involving CMH that would have placed CMH "clearly on notice that the training in this particular area was deficient and likely to cause injury.'" *Bonner-Turner*, 627 F. App'x at 414. We therefore affirm the grant of summary judgment in favor of CMH.

D. Gross Negligence

Finally, the estate alleged state-law claims for gross negligence against all Defendants under Mich. Comp. Laws § 691.1407. The district court denied summary judgment to Crawford County and County Defendants Baerlocher, Christman, Tessner, Stephan, Johnson, and Sheriff Wakefield's estate. These defendants appear to appeal, but they do not develop any argument in their brief beyond one conclusory statement contained in the summary of the argument. Thus,

they have forfeited this argument. *See McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997).

IV.

In summary, we REVERSE the district court's grant of summary judgment in favor of Defendant Larry Foster on the estate's deliberate indifference claim; DISMISS for lack of appellate jurisdiction Crawford County's appeal of the denial of summary judgment on the estate's municipal-liability claim; AFFIRM the district court's judgment as to the remaining defendants; and REMAND for further proceedings consistent with this opinion.