

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SCOTT J. BLOM,

Petitioner,

v.

SALLY DELLEMANN,
DENNIS HILLSTEAD,
KAREN HUMPHRIES, and
ST. CROIX COUNTY JAIL,

Respondents.

ORDER

03-C-0386-C

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the St. Croix County Jail in St. Croix, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. Petitioner alleges that respondents failed to enforce a no-contact order between him and another inmate, which resulted in physical injury, in violation of his Eighth Amendment rights. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. Of Corrections, 182 F.3d 532 (7th Cir. 1999).

Petitioner will be granted leave to proceed against respondent Dellemann. Respondents Hillstead and Humphries will be dismissed because the petitioner has not claimed that they had any personal involvement in the alleged incidents. The jail will be dismissed because it is not a suable entity.

In his complaint and attachment, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner is an inmate at the St. Croix County Jail in St. Croix, Wisconsin. Respondent Dennis Hillstead is the sheriff of St. Croix County, Wisconsin, respondent Sally Dellemann is a deputy in St. Croix County, Wisconsin and respondent Karen Humphries is the captain at the St. Croix County jail.

On May 16, 2003, James Kuralle attacked petitioner at a church service at the St. Croix County jail church. Kuralle is testifying against the petitioner in petitioner's attempted murder case and there is a no-contact order between the two. The no-contact order requires the jail to avoid placing Kuralle and petitioner in the same classes and services with each other. Petitioner and Kuralle were placed in the church service together despite the no-contact order. Respondent Dellemann was the deputy charged with enforcing the no-contacts that day.

As a result of Kuralle's attack, petitioner suffered two ten to twelve-inch lacerations on his face and neck, a cut under his eye, and persistent back injuries. Petitioner was taken to the hospital where he was given pain medication and muscle relaxers for his back injuries.

Respondent Dellmann begged petitioner not to file a grievance. In response to a grievance petitioner filed on May 21, 2003 about the incident, respondent Humphrey, captain of the St. Croix County jail, admitted that there was a failure to enforce the no-contact order. The county has assumed financial responsibility for medical costs relating to

the injuries petitioner suffered as a result of the attack.

DISCUSSION

A. Respondents Hillstead, Humphries and the St. Croix County Jail

To establish individual liability under 42 U.S.C. § 1983, petitioner must allege that the individual respondents were involved personally in the alleged constitutional deprivations. Under § 1983, individual respondents cannot be held liable under a theory of respondeat superior. See Hearne v. Board of Education of City of Chicago, 185 F.3d 770, 776 (7th Cir. 1999). “Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation.” Vance v. Peters, 97 F.3d 987, 991 (7th Cir. 1996) (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir. 1994)). See also Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983) (“A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary.”). It is not necessary that the respondent participate directly in the deprivation. The official is sufficiently involved “if she acts or fails to act with a deliberate or reckless disregard of plaintiff’s constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent.” Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985). See also Kelly v. Municipal Courts of Marion County,

Indiana, 97 F.3d 902, 909 (7th Cir. 1996); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995).

Because petitioner does not allege that either respondent Hillstead or respondent Humphries was involved personally in the alleged failure to enforce the no-contact order, petitioner will be denied leave to proceed against them. Although petitioner has alleged that respondent Humphries has admitted that there was a failure to enforce the no-contact order, this allegation is insufficient to show her involvement in placing petitioner and Kuralle in the same church service. Finally, petitioner will be denied leave to proceed against St. Croix County jail because the jail is a physical facility that is not capable of being sued under 42 U.S.C. § 1983.

B. Respondent Dellemann

The Eighth and Fourteenth Amendments give prisoners a right to remain safe from assaults by other inmates. See Langston v. Peters, 100 F. 3d 1235, 1237 (7th Cir. 1996). “[P]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 825 (1994). “Having incarcerated ‘persons [with] demonstrated proclivit[ies] for antisocial criminal, and often violent, conduct,’ see Hudson v. Palmer, 468 U.S. 517, 526 (1984), having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials

are not free to let the state of nature take its course.” Farmer, 511 U.S. at 833.

However, not every attack perpetrated by one inmate against another is an Eighth Amendment violation. Luttrell v. Nickel, 129 F.3d 933, 935 (7th Cir. 1997). In a case alleging a respondent’s failure to protect a prisoner from harm, “[t]he inmate must prove a sufficiently serious deprivation, i.e., conditions which objectively ‘pos[e] a substantial risk of serious harm.’” Pope v. Shafer, 86 F.3d 90, 92 (7th Cir. 1996) (quoting Farmer, 511 U.S. at 834). The inmate also must prove that the prison official acted with deliberate indifference to the inmate’s safety, “effectively condon[ing] the attack by allowing it to happen.” Langston, 100 F.3d at 1237 (quoting Haley v. Gross, 86 F. 3d 630, 640 (7th Cir. 1996)).

Although petitioner alleges only that respondent Dellemann “messed up,” this court must give a liberal construction to the allegations contained in a pro se litigant’s complaint. Thus, although it may well be that petitioner is alleging that respondent Dellemann was negligent in failing to keep petitioner separated from inmate Kuralle, a claim that would not be cognizable under 42 U.S.C. § 1983, see Farmer, 511 U.S. at 836; Vance, 97 F.3d at 992, I construe petitioner’s allegations as an assertion that respondent Dellemann acted with deliberate indifference in allowing petitioner and Kuralle to attend church services together, in effect condoning the attack. Read in this way, petitioners allegations are sufficient to state a claim of an Eighth Amendment violation. Therefore, the motion for leave to proceed

will be granted with respect to respondent Dellemann.

ORDER

IT IS ORDERED that

1. Petitioner Scott J. Blom is DENIED leave to proceed in forma pauperis against respondents Dennis Hillstead, Karen Humphries and St. Croix County jail; these respondents are DISMISSED from the case;

2. Petitioner's request for leave to proceed in forma pauperis is GRANTED on his claim against respondent Dellemann that his Eighth Amendment rights were violated when he was injured by another inmate as a result of respondent Dellemann's failure to enforce a no-contact order.

- For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.
- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or

typed copies of his documents.

- The unpaid balance of petitioner's filing fee is \$131.20; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 26th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge