

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

MICHAEL C. MAYFIELD,

Petitioner,

v.

STANLEY CORRECTIONAL INSTITUTION;
PAMELLA WALLACE; SEAN SALTERS;
UNIT MANAGER WEBSTER; SERGEANT
ANDERSON; CORRECTIONAL OFFICER
TEMPSKI; WAUPUN CORRECTIONAL
INSTITUTION STAIR MANUFACTURER
and HSU STAFF,¹

Respondents.

ORDER

08-cv-395-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate

¹Although petitioner lists Stanley Correctional Institution as the only respondent in the caption of his complaint, he has named seven additional respondents on the second page of his complaint. Therefore, I have modified the caption of this order to list all of the respondents' names as Fed. R. Civ. P. 10(a) requires.

judge to preside over all aspects of their case, so as to insure that all cases filed in the Western District of Wisconsin receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming jurisdiction over the case.

This is a proposed civil action for injunctive and monetary relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Columbia Correctional Institution in Portage, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner has paid the initial partial payment of \$4.55 as 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, 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. I conclude that petitioner fails to state a claim upon which relief may be granted with respect to his Eighth Amendment claim regarding the

condition of the stairwell structure. I conclude further that petitioner's Eighth Amendment claim regarding treatment of a serious medical need violates the notice provision of Fed. R. Civ. P. 8.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner Michael Mayfield is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. Respondent Stanley Correctional Institution is a physical facility. Respondent Pamela Wallace is the warden at the Stanley Correctional Institution. Respondent Sean Salters is the security director at the Stanley Correctional Institution. Respondent Anderson is a sergeant and respondent Tempski is a correctional officer; both work at the Stanley Correctional Institution. The "Waupun Correctional Institution Stair Manufacturers" is an unidentified entity. As the name suggests, HSU Staff are unidentified individuals who work in the Health Segregation Unit at the Stanley Correctional Institution.

B. Petitioner's Fall Down Stairs

On June 29, 2007, as petitioner was walking down a flight of stairs on unit 3C, his boot became caught "inside a groove/grate inside the defective stairway," "badly" injuring

his left knee. In particular, petitioner tore the lateral and medial meniscus in his knee. His injury was significant enough to require him to take pain medications and to use “various tools” to help him walk.

At the time of petitioner’s fall, “the facility” was aware that the stairwell that petitioner had fallen down was “defective” and a “vital hazard.” After his fall and injury, petitioner was denied “indispensable treatment for [his] injuries.”

DISCUSSION

I understand petitioner to be asserting two claims: 1) respondents Stanley Correctional Institution, Pamela Wallace, Sean Salters, Sergeant Anderson, Correctional Officer Tempski and the “Waupun Correctional Institution Stair Manufacturer” were deliberately indifferent to petitioner’s health and safety when they failed to insure that the stairway on which petitioner fell was maintained properly; and 2) unidentified members of the Health Segregation Unit were deliberately indifferent to petitioner’s need for medical care following his fall.

To state a claim under the Eighth Amendment’s cruel and unusual punishment clause that he was injured by the conditions of his confinement, a prisoner must allege facts from which it may be inferred that the condition complained of is “sufficiently serious” to implicate constitutional protection, and that prison officials acted with deliberate

indifference to inmate health and safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). Negligence or even gross negligence on the part of officials is not sufficient for liability; their actions must be intentional or criminally reckless. Id. at 837.

Put simply, the condition about which petitioner complains, a stairway with a grooved or grated step on which he caught his boot, cannot be characterized as a prison condition that is sufficiently serious to require protection under the Eighth Amendment. Stairways tend to be a common place for injuries to occur. The hazards presented by a flaw in a step is akin to a slippery floor. It is a safety hazard to which the general public is exposed on a daily basis and amounts to negligence at most rather than a danger of constitutional proportion. See e.g., LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir. 1993) (holding that "slippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment"); see also Snipes v. Detella, 95 F.3d 586, 592 (7th Cir. 1996) ("an inch or two" of accumulated water in the shower not "an excessive risk to inmate health or safety" (quoting Farmer v. Brennan, 510 U.S. 825, 838 (1996))). Because negligence alone is not enough to support a claim of deliberate indifference, Daniels v. Williams, 474 U.S. 327 (1986); Farmer, 511 U.S. at 837, petitioner will be denied leave to proceed against respondents Stanley Correctional Institution, Pamella Wallace, Sean Salters, Sergeant Anderson, Correctional Officer Tempski and the "Waupun Correctional Institution Stair Manufacturer."

Second, petitioner alleges that “HSU Staff” violated his Eighth Amendment rights when they denied him “indispensable treatment for [his] injuries.” The problems with this claim are twofold. First, petitioner does not identify any individual or individuals who denied him medical treatment. Second, he does not explain what each individual did or did not do. Thus, his complaint concerning his lack of medical care violates Fed. R. Civ. P. 8. “The primary purpose of [Rule 8] is rooted in fair notice: a complaint ‘must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.’” Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 775 (7th Cir. 1994) (119-page, 385-paragraph complaint “violated the letter and spirit of Rule 8(a)”). Petitioner’s allegations are not directed at any particular individual named in the caption of the complaint. Even if they were, his conclusory statement that he is being denied “indispensable treatment” is not enough to give any of the respondents or the court notice of his claim against them. Therefore, I will dismiss petitioner’s complaint in its entirety and allow petitioner an opportunity to submit a proposed amended complaint in which he (1) names the person or persons responsible for denying him medical treatment; and (2) describes in short and plain statements what each respondent did or did not do to care for petitioner’s injury.

If petitioner submits a proposed amended complaint that complies with Rule 8, I will examine it to determine whether he has stated a claim for a violation of his Eighth

Amendment rights against the respondents he has named. If petitioner fails to submit a complaint alleging his Eighth Amendment claim that complies with Rule 8, I will dismiss this case in its entirety. Petitioner is cautioned that he is not to revive in his proposed amended complaint his Eighth Amendment claim regarding the stairwell structure or any new claim. His opportunity to amend the complaint in this action is limited to curing the Rule 8 defect in his claim that he was denied medical care.

ORDER

IT IS ORDERED that:

1. Petitioner Michael Mayfield's request for leave to proceed in forma pauperis is DENIED with respect to his Eighth Amendment claim regarding the stairwell structure; that claim is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted.

2. Respondents Stanley Correctional Institution, Pamela Wallace, Sean Salters, Sergeant Anderson, Correctional Officer Tempski and the "Waupun Correctional Institution Stair Manufacturer" are DISMISSED from this action.

3. The remainder of petitioner's complaint is DISMISSED because it is in violation of Fed. R. Civ. P. 8. Petitioner may have until September 18, 2008, in which to submit a proposed amended complaint that complies with this rule. If, by September 18, 2008, petitioner fails to file the required amended complaint or show cause for his failure to do so,

then this claim will be dismissed without prejudice for petitioner's failure to prosecute and the case will be closed.

3. The unpaid balance of petitioner's filing fee is \$345.45; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

4. Because I am dismissing one of petitioner's claim for one of the reasons set out in 28 U.S.C. § 1915(g), a strike will be recorded against petitioner.

Entered this 5th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge