IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHAD GOETSCH,

ORDER

Plaintiff,

09-cv-228-bbc

v.

DR. LAETITIA LEY,
DR. MIKE VANDENBROOK
and DR. SCOTT RUBIN-ASCH,

Defendants.

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In an order entered in this case on December 30, 2010, I granted summary judgment to defendants on plaintiff Chad Goetsch's claims that they violated his rights under the Eighth Amendment by failing to give him adequate treatment for his mental health problems. On January 10, 2011, plaintiff moved for reconsideration of the summary judgment order. After reviewing plaintiff's motion, I conclude that it must be denied for plaintiff's failure to show that the December 30 order was wrong in any respect.

Essentially, plaintiff takes issue with each finding of fact and legal determination. In addition, he asserts that the court treated him unfairly by not appointing counsel for him. I explained to plaintiff on two separate occasions, dkts. ##15 and 49, why his request for

counsel was being denied: there are not enough lawyers to appoint one in every case in which it is requested and plaintiff had shown himself capable of litigating the case on his own behalf. He was able to follow the court's instructions and file coherent submissions and nothing about his alleged mental problems suggested that he would be unable to continue doing so.

Plaintiff's present motion suggests that his desire for counsel was founded in large part on his belief that counsel would retain an expert witness to support plaintiff's claims. Helpful as this would be for plaintiff, it is not the court's practice to appoint counsel just so a pro se plaintiff will have the assistance of an expert witness at counsel's expense. Plaintiff could have made efforts on his own behalf to find an expert witness who would have been willing to provide evidence on plaintiff's behalf either at a sharply reduced rate or for no charge at all.

At any rate, it is not clear that plaintiff would have succeeded had he obtained an expert witness, given the high standard of proof required to succeed on a constitutional claim of deliberate disregard to a serious medical need. As I explained throughout the December 30 opinion, defendants responded to plaintiff's requests to be seen by mental health workers for his complaints of mental and emotional distress and they responded by coming to his cell to check on him. Subsequently, he had some out-of-cell therapy sessions, albeit not so many as he wanted or in the venue he preferred.

Plaintiff contends that the court "believed" defendant Ley's averments over his and in addition, erroneously placed the burden of proof on him. He says that it was up to defendants to show his file from the Wisconsin Resource Center contained the notes that Ley said she had relied upon to the effect that plaintiff had "malingered symptoms for secondary gain." Plaintiff argues that it is defendants' burden to show that the file *did* contain the notes. Plaintiff is partially correct. It *is* the movants' burden to produce evidence in support of their proposed findings of fact. In this instance, defendants proposed as fact that Ley had read the notes and they supported that proposal with Ley's averment that she had read the notes. One way that plaintiff could have put that proposed fact into dispute would have been to show that the file did not contain notes to that effect. Plaintiff did not make such a showing or produce any evidence to put Ley's averment into dispute, such as an averment that he had read the entire file and it did not contain the notes. He merely denied that the notes were in the file. He says now that he could not have made the denial under oath had he not read the entire file, but that was not clear from his statement.

The point is ultimately inconsequential because the finding relating to the resource center notes played no part in my decision to grant summary judgment for Ley. In determining that Ley did not violate plaintiff's Eighth Amendment rights, I assumed that she did believe plaintiff and thus had the requisite knowledge that he was at a substantial risk of seriously harming himself. I found, however, that no jury could find the second part

of the necessary showing: that she had failed to take reasonable steps to address the risk. The undisputed facts were that defendant Ley reported plaintiff's statements to security so that plaintiff could be placed in a single cell, as he had requested, and she talked with the unit supervisor to insure that plaintiff received followup treatment and attention.

Plaintiff complains that the court granted judgment for defendant Vandenbrook because plaintiff had not proved that Vandenbrook received plaintiff's messages of his need for mental health treatment and his risk of self-harm. Plaintiff's reading of the order is mistaken on this point. In fact, I denied plaintiff's request to amend his complaint to assert a claim that Vandenbrook could have done more to treat plaintiff and prevent him from cutting himself. I found that it was too late to assert such a claim, not that plaintiff had failed to offer sufficient proof of the claim.

Plaintiff devotes much of his motion to explaining the benefits of psychotherapy and defendants' failure to offer him enough of it. I have no doubt that psychotherapy is a beneficial treatment for many people in many different situations, but as I explained, plaintiff did not put into dispute defendants' evidence that the treatment they provided plaintiff, which included "talk therapy," was not so blatantly inappropriate as to amount to deliberate indifference.

Finally, plaintiff complains that the court refused to give any weight to the written materials he submitted on the value of psychotherapy. Not only were they hearsay, as

plaintiff concedes, but they had no relevance to the questions under consideration. The fact that psychotherapy is useful and appropriate in many situations does not shed any light on plaintiff's need for it during the time at issue or on whether the treatment and attention plaintiff did receive was blatantly inappropriate in light of his actual needs at the time.

ORDER

IT IS ORDERED that plaintiff Chad Goetsch's motion, dkt. #113, for reconsideration of this court's December 30, 2010 order granting summary judgment for defendants Dr. Laetitia Ley, Dr. Mike Vandenbrook and Dr. Scott Rubin-Asch is DENIED.

Entered this 18th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge