

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

LORENZO SOLVANO BALLI,

Plaintiff,

ORDER

v.

10-cv-67-bbc

RICHARD RAEMISCH, JIM GREER
DAVID BURNETT, GREGORY GRAMS,
MARC CLEMENTS, JANEL NICKEL
DYLAN RADTKE, MARTHA BREEN,
ANDREA NELSON; RYAN TOBIASZ,
PETER ERICKSEN and GARY MAIER,
in their individual and official capacities;

Defendants.

Plaintiff Lorenzo Balli is a prisoner in the Wisconsin Department of Corrections. Acting pro se, he filed a 45-page complaint in this court against 37 defendants in which he challenged many aspects of his confinement. That complaint violated Fed. R. Civ. P. 20 because it included many unrelated claims that belonged in as many as seven different lawsuits. After I directed plaintiff to choose which lawsuits he wished to pursue, he filed motions to stay the proceedings and to appoint him a guardian ad litem. Plaintiff's correspondence indicated that another prisoner had been preparing all of plaintiff's

submissions and that plaintiff was unable to respond to the Rule 20 order or otherwise litigate this case. Accordingly, I granted plaintiff's motion to stay and appointed counsel to represent him.

Through his appointed counsel, plaintiff has filed a proposed amended complaint, as directed by the court. Because plaintiff is a prisoner, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. §§ 1915 and 1915A.

Plaintiff's amended complaint focuses on his mental health concerns. His allegations are similar to those in Matz v. Frank, 08-cv-491-slc and Schumacher v. Frank, 08-cv-228-slc, two recent cases before Magistrate Judge Stephen Crocker involving the treatment of mentally ill prisoners at the Waupun Correctional Institution. In particular, plaintiff alleges that he is seriously mentally ill, that he is not receiving adequate mental health treatment, that the conditions of his confinement are so harsh that they are exacerbating his mental illnesses and that he has made a number of attempts to commit suicide, which were unsuccessful but resulted in serious harm. In addition, he alleges that defendant Tobiasz retaliated against him for complaining about his conditions by placing him in observation without a smock or a mat to sleep on.

At this stage of the proceedings, I must accept these allegations as true. Further, I agree with Magistrate Judge Crocker that allegations such as plaintiff's are sufficient to state

a claim under the Eighth Amendment. Prisoners have a right to receive adequate medical care, Estelle v. Gamble, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983); see also Gates v. Cook, 376 F.3d 323, 332 (5th Cir. 2004) (under Eighth Amendment, “mental health needs are no less serious than physical needs”). Adequate care extends not just to things like medication and therapy but also to the conditions of confinement. When these “are so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit,” this may result in cruel and unusual punishment. Jones ‘El v. Berge, 164 F. Supp. 2d 1096, 1116 (W.D. Wis. 2001). In addition, prison officials have a duty to protect prisoners from harming themselves as a result of a mental illness. Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The standard is the same for all of plaintiff’s claims: whether a particular official was aware of a substantial risk to plaintiff’s health or safety and disregarded that risk by failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825 (1994).

The only problem with the amended complaint relates to the issue of personal involvement. Plaintiff includes the following “claims for relief” in the complaint:

97. Defendants Raemisch, Greer, Burnett, Grams, Clements and Breen have acted with deliberate indifference to Balli’s serious mental health and safety needs by, among other things, failing to implement effective procedures for suicide prevention at CCI, failing to implement or offer a process to screen prisoners housed at CCI or GBCI for mental illnesses, and subjecting Balli to

the harsh conditions of confinement set forth herein without a meaningful way to improve his situation. These acts and omissions have caused Balli serious physical injury, and physical and mental pain and suffering, all in violation of the Eighth Amendment to the United States Constitution.

98. Defendants Raemisch, Greer, Burnett, Grams, Clements, Radtke, Breen, Nelson, Tobiasz, and Maier have acted with deliberate indifference to Balli's serious mental health and safety needs by, among other things, failing to provide adequate mental health care to treat Balli's serious mental illness, which is exacerbated by the conditions of confinement set forth herein. These acts and omissions have caused Balli to suffer serious physical injury, and physical and mental pain and suffering, all in violation of the Eighth Amendment to the United States Constitution.

99. Defendants Grams, Clements, Nickel, Radtke, Breen, Maier, Nelson, Tobiasz, and Erickson have acted with deliberate indifference to Balli's serious mental health and safety needs by, among other things, subjecting Balli to harsh conditions of confinement that exacerbate his mental illness as set forth herein including, but not limited to, lack of exercise opportunities, excessive noise and sleep deprivation and retaliatory, punitive, observation placements; and failing to recommend, implement or support changes to formal and informal security policies and procedures that are instrumental in keeping Balli in segregation and/or administrative confinement. These acts and omissions have caused Balli to suffer serious physical injury, and physical and mental pain and suffering, all in violation of the Eighth Amendment of the United States Constitution.

100. Defendants Greer, Burnett, Grams, Clements, Nickel, Breen, Nelson, Tobiasz and Maier each have and/or had a duty to protect Balli from harming himself as a result of his mental illness. Each was aware of the substantial risk that Balli would harm himself and disregarded that risk by failing to take reasonable steps or precautions to abate it. Therefore, defendants Greer, Burnett, Grams, Clements, Nickel, Breen, Nelson, Tobiasz, and Maier have acted with deliberate indifference to Balli's serious risk of injury, in violation of the Eighth Amendment of the United States Constitution.

101. Defendant Tobiasz's placement of Balli in an observation cell and refusal

to provide him with a suicide gown or a mat to sleep on in response to Balli's complaints about the conditions of his confinement and the resulting effect on his mental illness, as described above, constitute retaliation in violation of Balli's constitutional rights.

Each of these claims is asserted against a different configuration of defendants, but it is not apparent from these claims or from the complaint as a whole *why* plaintiff has matched particular claims with particular defendants, with the exception of the last claim against defendant Tobiasz. For the most part, plaintiff's only allegations with respect to each defendant are descriptions of their job responsibilities. He does not explain why certain defendants are named on some claims, but not others. Further, it might be reasonable at the pleading stage to infer simply from the job responsibilities of certain defendants that they may be held liable for the conditions in which plaintiff is housed, Vinning-El v. Long, 482 F.2d 923, 924-25 (7th Cir. 2007), but that would not be enough to permit the drawing of an inference that particular defendants were aware of a substantial risk that plaintiff would attempt to commit suicide. Plaintiff must include facts about what each defendant knew about plaintiff's condition. E.g., Minix v. Canarecci, 597 F.3d 824, 833 (7th Cir. 2010).

Accordingly, I will give plaintiff an opportunity to amend his complaint so that he may specify the personal involvement of each defendant with respect to each claim for which that defendant is named.

ORDER

IT IS ORDERED that plaintiff Lorenzo Balli may have until October 4, 2010, to file an amended complaint that includes allegations regarding the personal involvement of each defendant for each claim.

Entered this 13th day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge