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

BOBBY LEE COIL,

Plaintiff,

v.

T. HAINES, WSPF Warden;
DAVIS WARDNER, Security Director;
CAPTAIN MASON; Dr. ROLLI;
S. SHARPE, Crisis Worker; DR, HOEM;
DR. BECKER; and JOHN DOES 1-10,

Defendants.

OPINION AND ORDER

11-cv-468-slc

Plaintiff Bobby Lee Coil, an inmate at the Wisconsin Secure Program Facility (WSPF) in Boscobel, Wisconsin, brings this civil complaint under 42 U.S.C. § 1983, in which he raises Eighth Amendment claims against defendants for acting with deliberate indifference to his mental health needs. In an order entered December 1, 2011, this court granted Coil leave to proceed on his claims that defendants T. Haines, Davis Wardner, Captain Mason, Dr. Rolli, S. Sharpe, Dr. Hoem, Dr. Becker and John Does 1-10 exacerbated his mental illness by housing him in harsh conditions of confinement, failed to treat his serious mental illness and failed to prevent him from engaging in acts of self harm. Dkt. 21. Before the court is Coil's motion for a preliminary injunction, in which he asks the court to order that he be removed from WSPF and placed in another institution. Dkts. 30 and 40. Coil also has made several requests for the appointment of counsel and for a mental health evaluation. Dkts. 34, 35, 38 and 53.

With respect to his motion for a preliminary injunction, Coil must show that he has some chance of success on the merits of his claims and that the balance of harms favors immediate relief. *Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 473 (7th Cir. 1998). Because Coil has failed to meet that standard, I must deny his motion for a preliminary injunction. For

similar reasons, I am denying Coil's request for a mental health examination. Finally, because I am not persuaded that counsel is necessary at this stage of the case, I will deny Coil's motions for appointment of counsel.

OPINION

I. Legal Standard

"[T]he granting of a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." *Roland Machinery Co. v. Dresser Industries*, 749 F.2d 380, 389 (7th Cir. 1984). A plaintiff asking for emergency or preliminary injunctive relief is required to make a showing with admissible evidence that (1) he has no adequate remedy at law and will suffer irreparable harm if the injunction is not granted; (2) the irreparable harm he would suffer outweighs the irreparable harm defendants would suffer from an injunction; (3) he has some likelihood of success on the merits; and (4) the injunction would not frustrate the public interest. *See Palmer v. City of Chicago*, 755 F.2d 560, 576 (7th Cir. 1985). For preliminary relief to be granted, the irreparable harm must be likely, that is, there must be more than a "mere possibility" that the harm will come to pass. *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 788 (7th Cir. 2011) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21–23 (2008)). Although the alleged harm need not be occurring or be certain to occur before a court may grant relief, there still must be a "presently existing actual threat" of harm. *Id*. (citations omitted).

At the threshold, Coil must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If Coil makes both showings, then

the court balances the relative harms and the public interest, considering all four factors on a "sliding scale." *See In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1300 (7th Cir. 1997).

When dealing with prisoner cases, federal courts must accord wide-ranging deference to correctional professionals in the adoption and execution of policies for the operation of penal institutions. *Whitley v. Albers*, 475 U.S. 312, 321–22 (1986) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)). Federal courts do not interfere with matters of prison management, such as which facility a particular prisoner is housed, without a showing that a particular situation violates the Constitution. *Mendoza v. Miller*, 779 F.2d 1287, 1292 (7th Cir.), *cert. denied*, 476 U.S. 1142 (1986).

Coil's claims are based on the Eighth Amendment, which prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Prison conditions may be harsh and uncomfortable without violating the Eighth Amendment's prohibition against cruel and unusual punishment. *Farmer v. Brennan*, 511 U.S. 825, 833-834 (1994). To succeed, Coil would need to show that "the conditions at issue were sufficiently serious so that a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities." *Townsend v. Fuchs*, 522 F.3d 765, 773 (7th Cir. 2008) (internal quotations omitted).

In addition, the Supreme Court has recognized that a prison official may violate a prisoner's right to medical care if the official is "deliberately indifferent" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of

treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584-85 (7th Cir. 2006). "Deliberate indifference" means that prison officials know of and disregard an excessive risk to inmate health and safety. *Farmer*, 511 U.S. at 837. Inadvertent error, negligence, gross negligence and ordinary malpractice do not amount to cruel and unusual punishment within the meaning of the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996); *Snipes v. DeTella*, 95 F.3d 586, 590-91 (7th Cir. 1996). Thus, disagreement with a doctor's medical judgment, an incorrect diagnosis or improper treatment resulting from negligence is insufficient to state an Eighth Amendment claim. *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997); *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261 (7th Cir. 1996). Instead, "deliberate indifference may be inferred [from] a medical professional's erroneous treatment decision only when the medical professional's decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment." *Estate of Cole*, 94 F.3d at 261-62.

II. Analysis

As the movant, it is Coil's burden to put forth facts bolstering his claims. *Chicago District Council of Carpenters Pension Fund v. K & I Construction, Inc.*, 270 F.3d 1060, 1064 (7th Cir. 2001) (preliminary injunction is "extraordinary remedy that should not be granted unless the movant, by a clear showing, carries the burden of persuasion."). Coil has failed to meet this burden. As an initial matter, I note that Coil's statement of proposed facts, dkt. 41, in large part does not comply with this court's procedures for obtaining a preliminary injunction. *See Procedure To Be Followed On Motions For Injunctive Relief*, attached to Order on Leave to Proceed, dkt. 21.

In particular, Coil has not supported the majority of his proposed facts with admissible evidence, such as a sworn affidavit. However, even if I were to consider Coil's recitation of the facts as an affidavit, his motion for injunctive relief would still be denied.

In his motion for a preliminary injunction, Coil asserts that he suffers from "manic depression" and "acute suicidality" as well as a host of other disorders. Although defendants dispute the nature of Coil's illness and adduce evidence that he is classified as not seriously mentally ill (" MH-1"), they admit he has been diagnosed with an Axis I adjustment disorder with mixed anxiety and depressed mood and dyssomnia (sleeping disorder). Conduct reports and other institutional records submitted by both parties also indicate that Coil has threatened to hurt himself on more than one occasion. Although the evidence is lacking, I will assume for the purposes of deciding the preliminary injunction motion that the Coil's mental health issues qualify as a serious mental need. *See Matos ex rel. Matos v. O'Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003); *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001) (it is well-settled that suicide is an objectively serious harm).

Coil alleges that the conditions of confinement in the segregation unit at WSPF are so harsh that they exacerbate his mental illness and suicidal tendencies. Coil generally asserts–without supporting evidence–that the WSPF psychologists misdiagnosed him and other mentally ill inmates who were transferred to WSPF so that these inmates can remain at the institution. He also claims that mentally ill inmates, like himself, are subjected to "cruel and unusual punishment" at WSPF. However, Coil has failed to come forth with specific evidence to show that he has any chance of succeeding on the merits of these claims. Coil offers a host of conclusory allegations concerning the bogus nature of his mental health evaluations and the

abuse that occurs in the segregation unit at WSPF but nothing specific enough from which this court could conclude that defendants are acting with deliberate indifference to his health and safety. Nothing in either of the parties' submissions indicate that Coil's mental health needs are not being monitored by the appropriate professionals at the institution. In fact, Coil's own evidence shows that institution staff have responded to his acts of self-harm by sending him to an outside hospital.

Coil relies heavily on the case of *Jones 'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001), in which this court allowed inmates at WSPF (then known as the Supermax Correctional Institution) to proceed as a class on a claim that their conditions of confinement subjected them to social isolation and sensory deprivation. In that case, Judge Crabb determined that the conditions at WSPF were "so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit" and that "many of the severe conditions serve no legitimate penological interest; they can only be considered punishment for punishment's sake." *Id.* at 1116-17. As a result, she entered a preliminary injunction barring the housing of seriously mentally ill patients at WSPF. *Id. Jones 'El* ultimately was resolved through a settlement agreement in which the Department of Corrections agreed not to house seriously ill inmates at WSPF for a period of time. 2002 WL 32362655, at *1 (W.D. Wis. Sept. 18, 2002).

Even though Coil complains in vague terms that the segregation cells at WSPF are dirty, extremely cold and sometimes contain human feces, I cannot conclude that he should be awarded a preliminary injunction under the theory recognized in *Jones 'El*. The key part of the claim in *Jones 'El* was that the inmates were denied almost all contact with other human beings, whether it was visitors, prison staff or other prisoners. *King v. Frank*, 328 F.

Supp. 2d 940, 949 (W.D. Wis. 2004). Thus, even if I assume that Coil is housed under severe conditions in segregation, there is no indication that he is deprived of all human interaction and sensory stimulation as in *Jones 'El*. *Id.* Further, and contrary to Coil's assertions, he cannot benefit specifically from the settlement agreement in *Jones 'El* because it terminated on May 3, 2008. *See id.*, 00-cv-421-bbc, dkt. 533.

In light of Coil's failure to introduce any evidence suggesting that any of the defendants named in this suit are being deliberate indifferent to his mental health needs, I am unable to find that he has any chance of success on the merits or that irreparable harm will result if an injunction is not issued. For the same reasons, I decline to order an independent mental health evaluation for Coil.

III. Appointment of Counsel

Coil has filed three motions for appointment of counsel since filing his motion for a preliminary injunction. He states that he needs counsel because he has a learning disability and has no knowledge of the law, WSPF has limited legal materials available for his use and an attorney is better able to argue his claim. He has shown that he made reasonable efforts to find a lawyer by submitting the names and addresses of at least three lawyers who declined to represent him on the issues in this case.

Appointment of counsel is appropriate in those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds the plaintiff's demonstrated ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 645-55 (7th Cir. 2007). Although Coil may lack legal knowledge, that is not a sufficient reason to appoint counsel,

because this handicap is almost universal among pro se litigants. To help him and others in similar situation, this court instructs pro se litigants at a preliminary pretrial conference about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, Coil has been or will be provided with a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work.

Finally, although Coil's mental health issues may be a concern, he has not yet shown that they have affected his litigation of this case. His filings have been clear and appropriately directed. There is nothing in the record to suggest that Coil is incapable of gathering and presenting evidence to prove his claims. As this case progresses, it may become apparent that appointment of counsel is warranted, but for now I will deny his motion.

ORDER

IT IS ORDERED that plaintiff Bobby Coil's motion for a preliminary injunction (dkts. 11 and 30), motions for appointment of counsel (dkts. 35, 38 and 53) and motion for an evaluation (dkt. 34) are DENIED.

Entered this 30th day of March, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge