

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

JOHN MORRIS ALBRECHT,

Plaintiff,

v.

WARDEN DEIRDRE A. MORGAN,
TIMOTHY CORRELL, ANN FARLEY,
GARY HAMBLIN and DEB LANCE,

Defendants.

OPINION AND ORDER

11-cv-569-wmc

This is a proposed civil action in which plaintiff John Morris Albrecht alleges that defendants failed to provide him medication for his pain. Albrecht asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. Based on the financial affidavit Albrecht has provided, the court concluded that he is unable to prepay the full fee for filing this lawsuit. Since Albrecht has made the initial, partial payment of the filing fee (\$136.00) required of him under § 1915(b)(1), the next step is determining whether Albrecht's proposed action is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Albrecht meets this step as to two of the defendants, he will be allowed to proceed and the state required to respond.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his

complaint, Albrecht alleges, and the court assumes for purposes of this screening order, the following facts:

- Plaintiff John Morris Albrecht is confined at the McNaughton Correctional Institution, located in Lake Tomahawk, Wisconsin, but was previously incarcerated at the Oakhill Correctional Institution (“Oakhill”), located in Oregon, Wisconsin.
- At the time relevant to this lawsuit, the following defendants worked at Oakhill: Deirdre A. Morgan as the Warden; Timothy Correll as a doctor; Ann Farley as a nurse; and Deb Lance as the inmate complaint examiner.
- Defendant Gary Hamblin is the secretary of the Wisconsin Department of Corrections.
- Albrecht has a chronic medical condition “with well over 100 painful tumors called Angiolipoma’s” located all over his body.
- On February 4, 2011, Albrecht was transferred to Oakhill from Gordon Correctional Center because of the need for medical management of his pain medication.
- On March 22, 2011, defendant Correll stopped Albrecht’s morphine prescription (75 milligrams a day), but continued him at a reduced dose (60 milligrams three times a day) later that same day. Correll further reduced his dosage of morphine to two times a day on April 15, 2011.
- On April 21, 2011, Correll informed Albrecht that he would be taken off the morphine gradually. His last dose was on June 8, 2011.
- Because of the decrease and eventual discontinuation of certain medication, Albrecht was put in severe pain.
- Correll told Albrecht that the stopping of his medication was because of a state-wide policy prohibiting narcotics for inmates.
- Albrecht told defendants Morgan, Farley, Lance and Hamblin about the lack of pain medication, but they did nothing to correct the situation.

OPINION

The Eighth Amendment prohibits prison officials from acting with deliberate indifference to a prisoner's serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). To state an Eighth Amendment claim for lack of treatment, a plaintiff must, therefore, allege facts from which it may be inferred that: (1) he had a serious medical need; and (2) prison officials were deliberately indifferent to that need. *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). Here, Albrecht claims that defendant Correll stopped his prescription medication causing him severe pain and that the other defendants knew about it.

“Serious medical needs” include: (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated; (2) conditions causing needless pain and suffering; or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez*, 111 F.3d at 1371-73. A prison official acts with deliberate indifference when the official is aware that an inmate has a serious medical need and acts or fails to act “in disregard of” that need. *Norfleet v. Webster*, 439 F.3d 392, 396 (7th Cir. 2006) (citing *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002)).

The court will allow Albrecht to proceed on his Eighth Amendment claim against Dr. Correll because he was allegedly aware of Albrecht's painful condition and had the ability to prescribe medication. Because Dr. Correll allegedly told Albrecht that he was acting pursuant to a “state-wide policy,” Albrecht will also be allowed to proceed against defendant Hamblin, who may have instituted the policy. Albrecht will not be allowed to

proceed against defendants Farley, Morgan and Lance, who were neither in a position to prescribe medication, nor to make policy.

Although Albrecht's allegations pass muster under the court's lower standard for screening as to defendants Correll and Hamblin, he will have to present admissible evidence permitting a reasonable trier of fact to conclude that defendants acted with deliberate indifference to his serious medical need to be successful on his claim, which is a high standard. Inadvertent error, negligence or even gross negligence are all insufficient grounds to invoke the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Albrecht's burden to prove: (1) his condition constituted a serious medical need; and (2) perhaps even more daunting, that the defendants knew his condition was serious, caused associated pain and suffering, could be relieved by prescription medication and deliberately ignored his need for this medication. Both elements may well require Albrecht to provide credible, expert testimony from a physician in the face of medical evidence to the contrary;

ORDER

IT IS ORDERED that:

- 1) Plaintiff John Morris Albrecht's request to proceed on his Eighth Amendment deliberate indifference claim against defendants Timothy Correll and Gary Hamblin is GRANTED.
- 2) Plaintiff's request to proceed against defendants Warden Deirdre Morgan, Ann Farley and Deb Lance is DENIED and these defendants are DISMISSED.
- 3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than

defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

- 4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- 5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- 6) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 27th day of June, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge