

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

DONALD CHARLES WILSON,

Plaintiff,

v.

DR. CARLO GAANAN, DR. DAWN B. DAVIS,
DR. KALPANA NARAHARISETTY, DR. PATRICK J. MURPHY,
CAPTAIN MATT JONES and CORINNE KIEROWSKI,

Defendants.

ORDER

12-cv-114-bbc

In this proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Donald Wilson, an inmate at the Oshkosh Correctional Institution, contends that defendant Dr. Carlo Gaanan, Dr. Dawn Davis, Dr. Kalpana Naraharisetty, Dr. Patrick Murphy, Captain Matt Jones and Corinne Kierowski violated his rights under the Eighth Amendment by failing to provide him adequate treatment for his thyroid condition. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

This case was severed from case number 11-cv-725-bbc and since then, plaintiff has filed two supplements to his complaint as well as motions for a preliminary injunction and a motion for appointment of counsel. Because plaintiff is a prisoner, I am required by the

1996 Prison Litigation Reform Act to screen his complaint and supplements and dismiss any portion that 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. 28 U.S.C. § 1915A. 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).

After reviewing plaintiff's allegations regarding treatment of his thyroid condition, I conclude that plaintiff may proceed with his Eighth Amendment claim against defendant Dr. Gaanan. However, plaintiff may not proceed against any other defendant. Additionally, I will deny plaintiff's motion for a preliminary injunction because his motion is not supported by proposed facts as required by this court. Finally, I will deny plaintiff's motion for appointment of counsel to represent him in this case. Plaintiff has not shown that counsel is necessary.

In his complaint and supplements, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Donald Charles Wilson is an inmate at the Oshkosh Correctional Institution, located in Oshkosh, Wisconsin. In August 2011, plaintiff received a diagnosis of an enlarged thyroid. Plaintiff complained to defendant Dr. Carlo Gaanan that his thyroid problem was causing him to experience shortness of breath, dizziness, difficulty eating and other

symptoms. Dr. Gaanan ordered blood and urine tests and an x-ray of plaintiff's thyroid glands, but provided plaintiff no treatment for the thyroid condition or for his symptoms. Plaintiff was told that he would have to wait until December 2011 to receive any medical attention.

On December 7, 2011, plaintiff was transferred to the University of Wisconsin Hospital in Madison for treatment of his thyroid disease. At the hospital, defendants Dr. Dawn Davis and Dr. Kalpana Naraharisetty examined him. They told him that although his thyroid was enlarged, they could not determine an appropriate treatment for him at that time because the prison had failed to supply the hospital necessary x-rays and lab tests. After plaintiff returned to the prison, plaintiff was told that, under prison policy, he would have to wait another three to six months for a followup appointment at the hospital.

On February 10, 2012, plaintiff nearly passed out while talking to a staff member. Plaintiff was transferred to the health services unit and was seen by defendant Dr. Patrick Murphy. Plaintiff told Dr. Murphy that his neck caused him severe pain, made it difficult to breathe and gave him double vision. Dr. Murphy examined plaintiff's neck, noted that it was enlarged and told plaintiff that he would be sent to the hospital for a CT scan and x-rays.

On March 8, 2012, plaintiff was taken to a bus that was to take him to the University of Wisconsin Hospital in Madison for a CT scan and x-rays. Before plaintiff got on the bus, a prison officer took plaintiff's room key and identification card, stating that those items

could not be taken out of the institution. While plaintiff was sitting on the bus, defendants Captain Matt Jones and Corinne Kiedrowski, a social worker, approached plaintiff and asked him for his date of birth and inmate number. Plaintiff could not remember his inmate number or date of birth and he could not look those numbers up because he did not have his identification card. Jones and Kiedrowski removed plaintiff from the bus and took him to the health services unit where he was locked in the prison infirmary. Defendant Dr. Murphy saw plaintiff and told him that it would be three to six months before another hospital appointment could be scheduled for him.

OPINION

A. Eighth Amendment

Plaintiff contends that all of the defendants violated his right to adequate medical treatment under the Eighth Amendment. Under the Eighth Amendment, prison officials have a duty to provide medical care to those being punished by incarceration. Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to it. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risks of permanent

serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual's daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996) or otherwise subjects the prisoner to a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 847 (1994).

“Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff's claim has three elements:

- (1) Did plaintiff need medical treatment?
- (2) Did defendants know that plaintiff needed treatment?
- (3) Despite defendants' awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

Plaintiff alleges that he has a serious thyroid condition that causes him significant pain and suffering. I can infer that his condition is a serious medical need that requires treatment.

It is a closer question whether plaintiff's allegations support the drawing of an inference that any defendant knew plaintiff needed treatment for a serious medical need, but failed to take reasonable measures to provide plaintiff treatment. Plaintiff alleges that he told defendant Dr. Gaanan about his symptoms and that although Dr. Gaanan performed

an x-ray and some lab tests, Dr. Gaanan provided no treatment for plaintiff's pain or other symptoms. If I draw all reasonable inferences in favor of plaintiff, I can infer that although Dr. Gaanan performed some testing, he acted with deliberate indifference when he failed to provide plaintiff any treatment for his pain and suffering. Thus, plaintiff may proceed with his Eighth Amendment claim against Dr. Gaanan.

Plaintiff should be aware that in order to prevail on his Eighth Amendment claim against defendant Dr. Gaanan at summary judgment or trial, it will not be enough for him to show that he disagrees with Dr. Gaanan's conclusions about the appropriate treatment for his thyroid condition, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that Dr. Gaanan could have provided better treatment. Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment by Dr. Gaanan was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes, 95 F.3d at 592 (internal quotations omitted). The law is clear that "[m]ere differences of opinion among medical personnel regarding a patient's appropriate treatment do not give rise to deliberate indifference." Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996); Snipes, 95 F.3d at 591 (decision "whether one course of treatment is preferable to another" is "beyond the [Eighth] Amendment's purview").

Plaintiff may not proceed on his claims against defendants Dr. Dawn Davis, Dr. Kalpana Naraharisetty or Dr. Patrick Murphy. Although these defendants were aware of his

thyroid condition, plaintiff has alleged no facts suggesting that they recklessly disregarded his condition. Rather, plaintiff alleges that Davis and Naraharisetty examined him but could reach no conclusions about appropriate treatment because they had not been provided sufficient information from the prison. Plaintiff's only allegations related to Murphy are that he examined plaintiff and told him that he would be scheduled for CT scans and x-rays at the hospital. These allegations do not suggest that these doctors were deliberately indifferent to plaintiff's medical needs. Rather, they suggest that after these doctors examined plaintiff, they could provide no further treatment without more information and testing.

Plaintiff also cannot proceed on his claims against defendants Captain Matt Jones and Corinne Kierowski. Although these defendants knew plaintiff was on a bus for the hospital, plaintiff has alleged no facts suggesting that these defendants knew about plaintiff's thyroid condition or that they believed he had a serious medical need. Further, although these defendants may have acted negligently in removing plaintiff from the bus, plaintiff's allegations do not suggest that they were deliberately indifferent to his medical needs. Rather, after they removed him from the bus, Jones and Kierowski took plaintiff directly to the health services unit to be seen by a doctor. Vance v. Peters, 97 F.3d 987, 992 (7th Cir. 1996) ("[A] defendant's inadvertent error [or] negligence . . . is insufficient to rise to the level of an Eighth Amendment constitutional violation.").

B. Motion for a Preliminary Injunction

Before a plaintiff can receive preliminary injunctive relief in this court, he must comply with the Procedure To Be Followed On Motions For Injunctive Relief, a copy of which I am including with this order. In particular, plaintiff must file with the court proposed findings of fact supporting his claim and submit with his proposed findings of fact any evidence he has to support his request. In addition, he must show that he meets the standard for obtaining preliminary injunctive relief. River of Life Kingdom Ministries v. Village of Hazel Crest, 585 F.3d 364, 369 (7th Cir. 2009) ("A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. To obtain such relief, the moving party must first demonstrate that it has a reasonable likelihood of success on the merits, lacks an adequate remedy at law, and will suffer irreparable harm.").

In this case, plaintiff did not follow this court's procedures and he included no specific facts in his motion showing that he is entitled to injunctive relief. Most of plaintiff's motion is a summary of the allegations in his complaint. He does not explain in any detail why he believes he needs immediate relief. Accordingly, I am denying his motion for a preliminary injunction without prejudice.

C. Motion for Appointment of Counsel

Plaintiff has filed a motion for appointment of counsel, dkt. #7, stating that he

suffers from Alzheimer's disease, has limited legal knowledge and has limited access to a law library. He has shown that he made reasonable efforts to find a lawyer by submitting the names and addresses of three lawyers whom he asked to represent him on the issues in this case and who turned him down.

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 plaintiff 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 a 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, plaintiff will be provided 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.

As for plaintiff's Alzheimer's disease, it is too early to tell whether his illness will overwhelm his ability to litigate this case. As this case progresses, it may become apparent that appointment of counsel is warranted, but for now I will deny his motion. Plaintiff is free to renew his motion at a later date.

ORDER

IT IS ORDERED that

1. Plaintiff Donald Charles Wilson's motion for appointment of counsel, dkt. #7, is DENIED without prejudice.

2. Plaintiff's motion for a preliminary injunction, dkt. #4, is DENIED without prejudice.

3. Plaintiff is GRANTED leave to proceed on his claim that defendant Dr. Carlo Gaanan failed to provide plaintiff any treatment or medication for plaintiff's thyroid condition in violation of the Eighth Amendment.

4. Plaintiff is DENIED leave to proceed on his claims that defendants Dr. Dawn Davis, Dr. Kalpana Naraharisetty, Dr. Patrick Murphy, Captain Matt Jones and Corinne Kierowski violated his rights under the Eighth Amendment.

5. Under 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 state defendant. 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 on behalf of the state defendant.

6. For the time being, plaintiff must send defendant a copy of every paper or

document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

7. 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.

8. 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 officials at the Oshkosh Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 11th day of April, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge