

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

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CARL BARRETT,

Plaintiff,

v.

LEVERNE WALLACE and  
SHAWN GALLINGER,

Defendants.  
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OPINION AND ORDER

12-cv-24-slc<sup>1</sup>

In this proposed civil action for monetary and injunctive relief, plaintiff Carl Barrett contends that correctional officers at the Wisconsin Secure Program Facility failed to obtain adequate medical treatment for him despite knowing that he was at risk for suicide. He is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his proposed amended complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money

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<sup>1</sup>For purposes of issuing this order, I am assuming jurisdiction over the case.

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 the complaint, I conclude that plaintiff may proceed on his claims that defendants Leverne Wallace and Shawn Gallinger failed to protect him from engaging in self harm in violation of the Eighth Amendment.

In his complaint, plaintiff alleges the following facts.

#### ALLEGATIONS OF FACT

Plaintiff Carl Barrett is currently an inmate at the Columbia Correctional Institution, located in Portage, Wisconsin. At all times relevant to his complaint he was confined at the Wisconsin Secure Program Facility, where defendants Leverne Wallace and Shawn Gallinger are employed as correctional officers.

In September 2010, plaintiff attempted suicide by overdosing on medication. On October 4, 2010, plaintiff told defendant Wallace that he had "a handful of pills," was "experiencing psychological distress" and "needed to speak with someone from psychological services." Wallace refused to contact anyone. After denying plaintiff's repeated requests to see a psychologist over the course of two hours, Wallace stopped answering plaintiff's emergency call button. Plaintiff asked other prisoners to try to convince Wallace to come

to his cell.

After a while, defendant Gallinger came to plaintiff's cell. Gallinger knew that plaintiff had previously attempted suicide. Plaintiff showed Gallinger that he had a handful of pills and told Gallinger that he was suicidal and needed to see a psychologist. Gallinger said, "Go ahead and take them, I don't care." Plaintiff responded by swallowing some of the pills. Sometime later, plaintiff ingested more pills and was rushed to the hospital. The incident required medical care and caused him pain and suffering.

#### OPINION

It is well established that prison officials have a duty to protect prisoners from harming themselves as a result of a mental illness. Minix v. Canarecci, 597 F.3d 824, 833 (7th Cir. 2010); Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). A prison official may violate the Eighth Amendment if he was aware of a substantial risk that the plaintiff would seriously harm himself, but disregarded that risk by failing to take reasonable measures to abate it. Farmer v. Brennan, 511 U.S. 825 (1994).

In this case, plaintiff alleges that neither Wallace nor Gallinger took any action to help him, yet both knew that he had attempted suicide previously, that he had "a handful of pills" and that he was experiencing psychological distress. Plaintiff further alleges that Gallinger saw him with "a handful of pills" and said, "Go ahead and take them, I don't care."

A prison official may violate the Eighth Amendment if he fails to take any action after being alerted that an inmate is at risk for suicide. Cavalieri v. Shepard, 321 F.3d 616, 620 (7th Cir. 2003); Sanville v. McCaughtry, 266 F.3d 724, 737-39 (7th Cir. 2001). Because that is exactly what plaintiff alleges that defendants did, plaintiff has stated a claim under the Eighth Amendment. Although plaintiff does not say how many pills he swallowed, it is reasonable to infer at this stage that his injuries requiring hospitalization were sufficiently serious to sustain a claim. However, if the facts show at summary judgment or trial that plaintiff was not actually at a serious risk of harm, this claim may be dismissed.

#### ORDER

IT IS ORDERED that

1. Plaintiff Carl Barrett is GRANTED leave to proceed on his claim that defendants Leverne Wallace and Shawn Gallinger failed to protect him from engaging in self harm, in violation of the Eighth Amendment;
2. For the time being, plaintiff must send a copy of every paper or document that he files with the court to defendants' lawyer. The court will disregard documents that plaintiff submits that do not show on the court's copy that he has sent a copy to defendants' attorney.
3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of

documents.

4. 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.

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). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 3d day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge