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

HOMER L. PERREN,

Plaintiff,

v.

SHERIFF STEVE HELGESON,

Defendant.

OPINION AND ORDER

13-cv-141-wmc

Plaintiff Homer L. Perren has filed a proposed civil action, alleging that his civil rights were violated while he was in custody at the La Crosse County Jail. He has also filed a motion for a default judgment. Because plaintiff requests leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915(a), the court must first determine whether his 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). In addressing any *pro se* litigant's complaint, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, plaintiff's request for leave to proceed must be denied for reasons set forth briefly below.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

Perrin was convicted of second-degree sexual assault of a child and sentenced to 10 years' imprisonment followed by a five-year term of extended supervision in La Crosse County Case No. 2000CF697.[1] Sometime before his release from prison, the state filed a petition with the La Crosse County Circuit Court pursuant to Wis. Stat. ch. 980, seeking Perren's involuntary civil commitment as a "sexually violent person." On December 12, 2012, a jury found that Perren met the statutory criteria found in Chapter 980 and the circuit court granted the state's petition for involuntary civil commitment. *See State v. Perren*, La Crosse County Case No. 2010CI3. Perren is presently confined at the Sand Ridge Treatment Center in Mauston, under the terms of that commitment order.

In his pending complaint, Perren contends that his constitutional rights were violated on December 12, 2012, while he was awaiting transfer to Sand Ridge at the La Crosse County Jail. The circuit court reportedly ordered "the La Crosse County Jail" to facilitate a contact visit between Perren and his mother, who suffers from Alzheimer's disease and a hearing deficiency. (*Compl*. (dkt. #1) ¶ 1). When transportation officers arrived to transfer him from the Jail to Sand Ridge, Perren refused to leave without seeing his mother as ordered by the circuit court. A sergeant contacted the circuit court to clarify the order and reported being told that the timing of Perren's transfer was "up to transportation people." Perren claims that unidentified deputies then pushed him down

[1] The court has supplemented plaintiff's allegations with dates and procedural information about his underlying proceedings from the electronic docket available at Wisconsin Circuit Court Access, http://wcca.wicourts.gov (last visited November 15, 2013). The court draws all other facts from the complaint and the attached exhibits. *See* FED. R. CIV. P. 10(c); *see also Witzke v. Femal*, 376 F.3d 744, 749 (7th Cir. 2004) (explaining that documents attached to the complaint become part of the pleading, meaning that a court may consider those documents to determine whether plaintiff has stated a valid claim).

on the concrete floor, placed him in handcuffs and "rushed" him back to Sand Ridge without allowing the contact visit or checking to see if he was hurt.

Perren contends that his constitutional rights under the First and Fourteenth Amendments were violated when deputies forcibly denied him a contact visit with his mother as directed by the circuit court. Plaintiff seeks declaratory relief. He also seeks $250 in compensatory damages and $500 in punitive damages from La Crosse County Sheriff Steve Helgeson for the "physical abuse" and "emotional injuries" that he sustained.

OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Rule 8 of the Federal Rules of Civil Procedure. In particular, Rule 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). It is not necessary for a plaintiff to plead specific facts. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). By contrast, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are insufficient to establish a plausible claim. *Id.* (citing *Twombly*, 550 U.S. at 555) (observing that courts "are not bound to accept as

true a legal conclusion couched as a factual allegation").

To state a valid claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) he was deprived of a right secured by the Constitution or laws of the United States; and (2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)). To demonstrate liability under § 1983, a plaintiff must allege sufficient facts showing that an individual personally caused or participated in the alleged constitutional deprivation. *See Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000); *Walker v. Taylorville Correctional Ctr.*, 129 F.3d 410, 413 (7th Cir. 1997) (noting that "personal involvement" is required to support a claim under § 1983). Dismissal is proper "if the complaint fails to set forth 'enough facts to state a claim to relief that is plausible on its face.'" *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 625 (7th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Plaintiff sues Sheriff Helgeson under 42 U.S.C. § 1983 in his capacity as a supervisory official. There is no respondeat superior or vicarious liability under § 1983. *See Monell v. Dep't of Social Services*, 436 U.S. 658, 694 (1978); *Kinslow v. Pullara*, 538 F.3d 687, 693 (7th Cir. 2008). In other words, for a supervisor to be liable he or she must be "personally responsible for the deprivation of the constitutional right." *Chavez v. Illinois State Police*, 251 F.3d 612, 651 (7th Cir. 2001) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)). To be held liable under § 1983, a supervisor must "know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of

what they might see[.]" *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992-93 (7th Cir. 1988)). "In short, some causal connection or affirmative link between the action complained about and the official sued is necessary for § 1983 recovery." *Hildebrandt v. Ill. Dep't of Natural Res.*, 347 F.3d 1014, 1040 (7th Cir. 2003) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)).

Without minimizing the emotional pain that Perren experienced when he was denied the opportunity to see his ailing mother, he does not allege facts showing that Sheriff Helgeson had any personal involvement with the incident that forms the basis of his complaint. Even if he were to have named those more directly involved, none appear to have acted in bad faith given the judge's reported modification of his original directive. Accordingly, although the event is indeed regrettable, the court will deny leave to proceed and dismiss the complaint for failure to state a claim upon which relief can be granted.

ORDER

IT IS ORDERED that:

1. Plaintiff Homer L. Perren's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice for failure to state a claim.
2. Perren's motion for a default judgment (Dkt. # 9) is DENIED.

Entered this 29th day of January, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge