

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

WALTER BLANCK,

Plaintiff,

v.

CORRECTIONAL OFFICER VERDEGEN,

Defendant.

ORDER

14-cv-135-bbc

Plaintiff Walter Blanck is a prisoner housed at the Green Bay Correctional Institution. In a February 4, 2014 order in case no. 13-cv-193-bbc, I addressed his amended complaint in that case, stating that it violated Fed. R. Civ. P. 20 because it contained groups of claims that belonged in three different lawsuits. Plaintiff chose to pursue a group of claims regarding medical treatment for his heart condition in case no. 13-cv-193-bbc, and I gave plaintiff the choice to continue with the other two groups of claims by submitting initial partial payments of \$105.17 for the cases he wished to pursue. (Although plaintiff has struck out under 28 U.S.C. § 1915(g), I have already concluded that all three sets of allegations contained in his complaint meet the imminent danger standard at this point in the proceedings.)

Plaintiff has responded by submitting initial partial payments for both additional lawsuits. In this lawsuit I will address the group of claims I named “Lawsuit #2” regarding

assaults against plaintiff. The next step is to screen plaintiffs' complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). In screening plaintiff's claims, the court must construe the complaint liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007).

After considering plaintiff's allegations in "Lawsuit #2," I will allow him to proceed on an Eighth Amendment failure to protect claim against defendant correctional officer Verdegen. In addition, I will construe plaintiff's complaint as including a motion for preliminary injunctive relief and set briefing on that motion.

I draw the following allegations from plaintiff's complaint.

ALLEGATIONS OF FACT

Plaintiff Walter Blanck is a prisoner housed at the Green Bay Correctional Institution. I understand plaintiff to be complaining that defendant correctional officer Verdegen has failed to protect him from assault and has even encouraged assaults against him since 2005. Verdegen directed an inmate to spit at plaintiff and yell "He's a cop." Verdegen "groomed" a group of inmates, telling them they could "go after" plaintiff while Verdegen was on duty, and "they did" (by which I understand plaintiff to be saying that the inmates attacked him). Verdegen has repeatedly loudly called plaintiff a "CIA and FBI guy" in front of other inmates, endangering his safety. Plaintiff states that, as of the time he filed his complaint, Verdegen "has not let up" with his actions.

OPINION

To state a claim under Eighth Amendment claim against a prison official for failing to protect a prisoner from harm, the prisoner must allege that (1) he faced a “substantial risk of serious harm” and (2) the prison officials identified acted with “deliberate indifference” to that risk. Farmer v. Brennan, 511 U.S. 825, 834 (1994); Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005). “[O]ne does not have to await the consummation of threatened injury to obtain preventive relief.” Farmer, 511 U.S. at 845 (quoting Pennsylvania v. West Virginia, 262 U.S. 553, 593 (1923)). I understand plaintiff to be alleging that defendant Verdeggen has caused him harm by calling him an informant in front of other inmates and encouraging other inmates to attack him, and that the threat of harm remains because Verdeggen continues this behavior. These allegations are sufficient to state an Eighth Amendment claim against Verdeggen.

Because plaintiff is alleging that he is in imminent danger of serious physical harm, I construe his complaint as including a request for preliminary injunctive relief. Under this court’s procedures for obtaining a preliminary injunction, a copy of which plaintiff received with the court’s February 4, 2014 order in case no. 13-cv-193-bbc, plaintiff must file with the court and serve on defendant a brief supporting his claim, proposed findings of fact and any evidence he has to support his request for relief. He may have until April 24, 2014 to submit these documents. Defendant may have until the day his answer is due in which to file a response. I will review the parties’ preliminary injunction submissions before deciding whether a hearing will be necessary.

Plaintiff should be aware that the bar for obtaining a preliminary injunction is significantly higher than it is for obtaining leave to proceed. Plaintiff should read the preliminary injunction procedures carefully before preparing his materials in support of his motion. In his proposed findings of fact, plaintiff will have to lay out the facts of his case in detail in separate numbered paragraphs, identifying defendant's actions, the threats he faced from other inmates and an explanation for why he believes he is currently in danger. Moreover, plaintiff's submissions will have to be legible and understandable, so that defendant can respond and the court can rule on the motion. Most of plaintiff's filings in this court have been borderline unintelligible, both because of plaintiff's handwriting and his stream-of-consciousness writing style. He cannot succeed on his motion for preliminary injunctive relief or on any future motions unless his documents can be read and understood.

Plaintiff will have to show that he has some likelihood of success on the merits of his claim and that irreparable harm will result if the requested relief is denied. If he makes both showings, the court will move on to consider the balance of hardships between plaintiff and defendants and whether an injunction would be in the public interest, considering all four factors under a "sliding scale" approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

Also, plaintiff should be aware of the ramifications facing litigants who abuse the imminent danger exception to their three-strike status. The only reason that plaintiff has been allowed to proceed in forma pauperis in this case is that his allegations suggest that he was under imminent danger of serious physical injury at the time that he filed his complaint.

The “imminent danger” exception under 28 U.S.C. § 1915(g) is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002). In certain cases it may become clear from the preliminary injunction proceedings that a plaintiff who has already received three strikes under § 1915(g) for bringing frivolous claims has exaggerated or even fabricated the existence of a genuine emergency in order to circumvent the three-strikes bar. In such a case, this court may revoke its grant of leave to proceed in forma pauperis once it is clear that plaintiff was never in imminent danger of serious physical harm. Plaintiff would then be forced to pay the full \$350 filing fee or have his case dismissed.

ORDER

IT IS ORDERED that

1. Plaintiff Walter Blanck is GRANTED leave to proceed on a failure to protect claim against defendant correctional officer Verdegen.

2. Plaintiff may have until April 24, 2014 in which to file a brief, proposed findings of fact and evidentiary materials in support of his motion for a preliminary injunction. Defendant may have until the date his answer is due to file materials in response.

3. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s operative pleading and this order are being sent today to the Attorney General for service on defendant. Plaintiff should not attempt to serve defendant on his own at this time. 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 defendant.

4. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

5. 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 his documents.

6. Plaintiff is obligated to pay the unpaid balance of the filing fee for this case 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, 2014.

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