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

JERRY J. MEEKS,

OPINION & ORDER

Plaintiff,

v. 14-cv-703-jdp

COLUMBIA CORR. INSTITUTIONAL,
SGT. PAUL, and JOHN DOE (WHITE SHIRT),

Defendants.

Plaintiff Jerry Meeks, a Wisconsin prisoner currently housed at the Wisconsin Resource Center, located in Winnebago, Wisconsin, has submitted a proposed civil complaint under 42 U.S.C. § 1983, alleging that officials at the Columbia Correctional Institution took away medically prescribed shoes while he was incarcerated there, leaving him in severe pain. He has also filed a motion for appointment of counsel. Plaintiff seeks leave to proceed with his case *in forma pauperis*, and he has already made an initial partial payment of the filing fee previously determined by the court.

The next step is for the court to screen plaintiff's 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 damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 & 1915A. In screening 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 review of the complaint with this principle in mind, I conclude that plaintiff adequately states Eighth Amendment medical care claims against defendants Sergeant Paul and John Doe captain. Also, I will deny plaintiff's motion for appointment of counsel without prejudice to his refiling it at a later date.

ALLEGATIONS OF FACT

Plaintiff Jerry Meeks is currently housed at the Wisconsin Resource Center. At the time he filed his complaint, he was incarcerated at the Columbia Correctional Institution.

Plaintiff was approved by doctors at the Columbia Correctional Institution and Wisconsin Resource Center to have "medical shoes" because of nerve pain and a January 2012 surgery to remove bullet fragments from plaintiff's left leg.

Plaintiff's allegations are somewhat difficult to understand, but he states that after he "won [his] settlement," he had an officer assist him in ordering the shoes from an outside vendor. When the shoes arrived at the Columbia Correctional Institution, plaintiff "had problems" getting them approved by a property sergeant, which triggered plaintiff's mental illness.

Plaintiff received the shoes on October 21, 2013 (it is unclear how long of a delay this was). After this, defendant Sergeant Paul told plaintiff to take off the shoes and give them to him. After plaintiff refused to give Paul the shoes, Paul told plaintiff to "lock in" his cell (I understand plaintiff to be saying that Paul made him stay in his cell). Plaintiff asked for a correctional captain. When the captain arrived, he or she told plaintiff to hand over his shoes. For the time plaintiff has been without his shoes, plaintiff has suffered much worse pain.

ANALYSIS

I understand plaintiff to be bringing claims against defendants Paul and John Doe captain for violating his Eighth Amendment rights against cruel and unusual punishment by taking the footwear that had been prescribed for him by prison doctors.

The Eighth Amendment prohibits prison officials from acting with deliberate indifference to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584–85 (7th Cir. 2006). 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, significantly affects an individual's daily activities, *Gutierrez v. Peters*, 111 F.3d 1364, 1371–73 (7th Cir. 1997), or otherwise subjects the prisoner to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Plaintiff alleges that he suffers from foot pain, for which prison doctors have prescribed him special footwear. This is sufficient to show that plaintiff has a serious medical need. He further alleges that defendants Paul and John Doe captain took away the footwear. This interference with the doctors' prescription is sufficient to show defendants' deliberate indifference to the problem, at least at this point in the proceedings. Accordingly, I will allow plaintiff to proceed on Eighth Amendment claims against defendants Paul and Doe captain.

At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain the process for plaintiff to use discovery to identify the names of the Doe defendant and to amend the complaint to include the proper identity of that defendant.

Sergeant Paul and Doe captain are the only individuals named as defendants in the complaint. Plaintiff also appears to name the Columbia Correctional Institution as a defendant, but he may not proceed on any claims against the prison as an organization. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65-66, (1989) (state agencies, as opposed

to individuals, may not be sued for constitutional violations under 42 U.S.C. § 1983). To the extent that plaintiff believes that the "property sergeant" violated his rights, plaintiff does not name that person as a defendant, so he may not proceed on claims against him or her.

Finally, plaintiff has filed a motion for appointment of counsel, Dkt. 7. The term "appoint" is a misnomer, as I do not have the authority to appoint counsel to represent a pro se plaintiff in this type of a case; I can only recruit counsel who may be willing to serve in that capacity. To show that it is appropriate for the court to recruit counsel, plaintiff must first show that he has made reasonable efforts to locate an attorney on his own. *See Jackson v. Cnty. of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992) ("the district judge must first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts"). To meet this threshold requirement, this court generally requires plaintiffs to submit correspondence from at least three attorneys to whom they have written and who have refused to take the case. Plaintiff did not submit such correspondence or even suggest that he has contacted outside lawyers for help. This would be reason enough to deny his motion.

In any event, this court will seek to recruit counsel for a pro se litigant only when the litigant demonstrates that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654–55 (7th Cir. 2007). It is too early to tell whether plaintiff's claims will outstrip his litigation abilities. In particular, the case has not even passed the relatively early stage in which defendant may file a motion for summary judgment based on exhaustion of administrative remedies, which often ends up in dismissal of cases such as plaintiff's before they advance deep into the discovery stage of the litigation. Should the case pass the

exhaustion stage and plaintiff believes that he is unable to litigate the suit himself, he may renew his motion after seeking out outside help from lawyers.

ORDER

IT IS ORDERED that:

1. Plaintiff Jerry Meeks is GRANTED leave to proceed on Eighth Amendment claims against defendants Sergeant Paul and John Doe captain for taking his medically prescribed shoes.

2. Plaintiff is DENIED leave to proceed on any claims against defendant Columbia Correctional Institution, and that defendant is DISMISSED from the lawsuit.

3. Plaintiff's motion for appointment of counsel, Dkt. 7, is DENIED without prejudice to plaintiff renewing his motion later in the proceedings.

4. 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 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 on behalf of defendants.

5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve defendants' lawyer directly rather than defendants themselves. The court will disregard any documents submitted by plaintiff unless he shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. 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.

7. 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 May 8, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge