

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

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BRITTON DUANE McKENZIE,

Plaintiff,

v.

PAUL MILBRATH, KAREN BUTLER  
and JEFFERSON COUNTY SHERIFF'S DEPT.,

Defendants.  
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OPINION AND ORDER

15-cv-116-bbc

Pro se plaintiff Britton Duane McKenzie has filed a proposed complaint in which he complains about the medical care he received while he was incarcerated at the Jefferson County jail. Because plaintiff is proceeding in forma pauperis under 28 U.S.C. § 1915, I must screen his complaint to determine whether it states a claim upon which relief may be granted. Having reviewed the complaint, I conclude that plaintiff may proceed on a claim under the Eighth Amendment that defendants Paul Milbrath and Karen Butler denied him medical care for problems with his teeth and with respect to his difficulty swallowing, but I am dismissing the complaint as to the Jefferson County Sheriff's Department.

In his complaint, plaintiff says that defendants Paul Milbrath (the jail administrator) and Karen Butler (a physician at the jail) refused his requests to provide treatment for his missing teeth (for example, by providing dentures) and for his esophageal opening, which he says was closing and needed to be dilated. As a result, plaintiff says that it was very difficult for him to eat and swallow food, even with a "soft diet." Although plaintiff mentions other medical problems in his complaint, such as hypertension and a strained shoulder, I do not understand him to be raising separate claims about those issues because he does not identify a particular jail official he believes should be held responsible for failing to treat those conditions and he does not identify any treatment he believes he should have received.

Plaintiff's claims arise under the Eighth Amendment if he was a convicted prisoner at the time of the relevant events or under the Fourteenth Amendment if he was a pretrial detainee. Cavalieri v. Shepard, 321 F.3d 616, 620 (7th Cir. 2003). Plaintiff does not say in his complaint whether he was a pretrial detainee or a convicted prisoner, but I do not need to resolve that issue in the screening order because the Court of Appeals for the Seventh Circuit has applied the same standard to medical care claims under both the Eighth Amendment and Fourteenth Amendment. Smego v. Mitchell, 723 F.3d 752 (7th Cir. 2013).

A jail official may violate a prisoner's or detainee's constitutional right to medical care if the official is "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (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). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). The same standard applies to dental care. Board v. Farnham, 394 F.3d 469, 480 (7th Cir. 2005).

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 their awareness of the need, were defendants consciously failing to take reasonable measures to provide the necessary treatment?

In this case, it is reasonable to infer from plaintiff's allegations that he was unable to eat without great difficulty because of his medical problems and that he complained to defendants Milbrath and Butler about his problems, but they refused to take reasonable steps to help him. Accordingly, I will allow plaintiff to proceed on this claim.

At summary judgment or trial, it will be plaintiff's burden to show that a reasonable jury could find in his favor on each element of his claim. Henderson v. Sheahan, 196 F.3d 839, 848 (7th Cir. 1999). It will not be enough for plaintiff to show that he disagrees with defendants' conclusions about the appropriate treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendants could have provided better treatment. Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). In particular, he will have to show that defendants' conduct was "blatantly inappropriate" and that defendants knew about obvious, reasonable alternatives, but refused to consider them. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted).

I am dismissing plaintiff's claim against the sheriff's department. The first problem is that the sheriff's department is not an entity that can be sued. Best v. City of Portland, 554 F.3d 698 (7th Cir. 2009); Chan v. Wodnicki, 123 F.3d 1005, 1007 (7th Cir. 1997). Although a municipality such as Jefferson County may be sued, I decline to substitute the county because plaintiff does not allege that the individual defendants were acting in accordance with a policy or custom of the county, which is a requirement for municipal liability under the Constitution. Monell v. Department of Social Services, 436 U.S. 658, 691 (1978).

## ORDER

IT IS ORDERED that

1. Plaintiff Britton Duane McKenzie is GRANTED leave to proceed on his claims that defendants Paul Milbrath and Karen Butler refused to provide treatment for his missing teeth and problems with swallowing, in violation of the United States Constitution.

2. Plaintiff is DENIED leave to proceed on his claim against defendant Jefferson County Sheriff's Department and the complaint is DISMISSED as to that defendant.

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

4. 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.

5. Summonses and copies of plaintiff's complaint and this order are being forwarded to the United States Marshal for service on defendants.

Entered this 20th day of March, 2015.

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