

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

DAMIEN SMITH,

Plaintiff,

v.

TIM DOLANG, CANDACE WARNER
and JOHN DOES(S),

Defendants.

OPINION AND ORDER

15-cv-633-bbc

Pro se prisoner Damien Smith has filed a complaint under 42 U.S.C. § 1983 in which he alleges that prison officials at the New Lisbon Correctional Institution failed to give him appropriate medical treatment after he broke his hand in May 2014. Plaintiff has made an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. §§ 1915 and 1915A. Having reviewed the complaint, I conclude that plaintiff has stated a claim against the unnamed nurse who examined him the day he broke his hand. However, I am dismissing the complaint as to any other claim because plaintiff has failed to provide enough information to allow a determination regarding whether any other staff member may have violated his rights. If plaintiff wishes to pursue those claims, he will have to file an amended complaint.

OPINION

I understand plaintiff to contend that various unnamed prison health care staff members have violated his Eighth Amendment right to medical care and continue to violate this right by delaying his treatment for a broken hand and giving him inadequate pain medication. In addition, plaintiff alleges that defendant Candace Warner (the health services manager) violated the Eighth Amendment by failing to train her employees properly. Plaintiff does not include any allegations in his complaint against defendant Tim Dolang except to say that he is the warden of the New Lisbon prison.

A prison official may violate the Eighth Amendment 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).

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, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Plaintiff has alleged these elements with respect to one of the “John Doe” defendants. In particular, plaintiff alleges that he broke his hand during recreation on May 10, 2014. When plaintiff was taken to see a nurse, plaintiff said that he had “never felt pain like this before,” he asked to see a doctor or be taken to the hospital and he expressed his belief that he needed surgery “immediately.” Although the nurse could see that plaintiff’s hand was swollen and “discolor[ed],” the nurse told plaintiff that he was “fine” and refused to do anything except prescribe ibuprofen. From these allegations, it is reasonable to infer at the pleading stage that the nurse knew that plaintiff had a serious medical need, but the nurse consciously refused to take appropriate action to provide treatment.

Although plaintiff did not include the name of the nurse in his complaint, that is not necessarily a reason to dismiss the claim against the nurse. “[W]hen the substance of a prose civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint.” Donald v. Cook County Sheriff's Department, 95 F.3d 548, 555 (7th Cir.1996); see also Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir.1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendant’s identity). With respect to this

nurse, plaintiff has provided enough information to attempt to identify that defendant. Accordingly, I will allow plaintiff to proceed against defendants Tim Dolang (the warden) and Candace Warner (the health services unit manager) for the sole purpose of discovering the name of the nurse who examined him on May 10, 2014. Early on in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed defendant and will set a deadline within which plaintiff is to amend his complaint to include the unnamed defendant.

I conclude that plaintiff's allegations against defendants Dolang (the warden) and Warner (the health services unit) are not sufficient to state a claim against them in their individual capacity. Plaintiff's only allegation against defendant Warner is that she provided "poor supervision" and "fail[ed] to train" her staff. Plaintiff includes no allegations about Dolang except to say that he is the warden. However, a person cannot be held liable under § 1983 simply because he or she supervises an employee who violated the plaintiff's rights, Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009), even if he or she was negligent. Childress v. Walker, 787 F.3d 433, 437 (7th Cir. 2015).

Plaintiff includes many additional allegations in his complaint about unnamed "HSU staff" who allegedly refused to provide him appropriate treatment in the weeks after he was injured, but it is not clear which of these staff members he intends to sue. He lumps them all together as "HSU staff" and he provides few details that might help identify them or help the court understand why he believes they violated his rights. "A plaintiff [suing 'John Doe']

defendants] must not only allege that the defendant is unknown, but also provide, or attempt to provide, an adequate description or other known information so that service of process can at least be attempted. . . . The court will not permit use of the ‘Doe’ designation for a defendant if the plaintiff’s ignorance of the defendant’s true identity is the result of willful neglect or lack of reasonable inquiry.” 2 Moore’s Federal Practice § 10.02[2][d][i] (3d ed. 2015). Until plaintiff provides more information, I cannot allow him to proceed on a claim that unknown health care staff members violated his rights.

Plaintiff also says that he continues to experience pain and suffering, but he includes no allegations about events that occurred after August 2015, so it is impossible to determine whether staff members may be violating plaintiff’s rights now.

Accordingly, I will allow plaintiff to proceed on his claim against the nurse who examined him on May 10, 2014. I will keep Dolang and Warner as defendants for the sole purpose of identifying the nurse, but I am dismissing the complaint as to plaintiff’s claims against Dolang and Warner in their individual capacity and against all the other unnamed defendants.

If plaintiff wishes to proceed against anyone other than the nurse who examined him on May 10, 2014, plaintiff will have to file an amended complaint that includes more information. As an initial matter, plaintiff should make reasonable efforts to learn the names of the unnamed staff members. If he is unable to learn the name of a person he wishes to sue, he should describe any efforts he made to learn those names. If plaintiff does not show that he made reasonable efforts, plaintiff will not be allowed to proceed against that

defendant.

Second, to make it clear how many staff members plaintiff wishes to sue, he should identify each one in the body of his complaint as a separate number. For example, the nurse who examined plaintiff on May 10, 2014 would be “John Doe 1.” Any additional unknown staff members would receive their own number, such as “John Doe 2,” “John Doe 3” and so on. Any time plaintiff refers to an unknown defendant in his complaint, he should use this system. If plaintiff uses the phrase “HSU staff” in his complaint, I will assume that he does not intend to sue those staff members.

Third, plaintiff should explain why he believes that each John Doe defendant violated his rights under the Eighth Amendment. In other words, plaintiff should explain what he believes each defendant should have done but failed to do and why he believes they should have provided more or different treatment. When providing this information, plaintiff should make sure he addresses the elements of an Eighth Amendment claim, which are listed above.

Fourth, plaintiff should provide as many details as he can about any unnamed defendants so that they can be identified later in the case. Some of these details might include the date and approximate time plaintiff had contact with the staff member, anything plaintiff remembers about what he told the staff member, what the staff said and did in response and any physical characteristics of the staff member. If plaintiff does not know this information, he should say so and explain the efforts he took to uncover the information.

ORDER

IT IS ORDERED that

1. Plaintiff Damien Smith is GRANTED leave to proceed on his claim that an unnamed nurse failed to provide adequate medical treatment for his broken hand on May 10, 2014. Plaintiff may proceed against Candace Warner and Tim Dolang for the sole purpose of identifying the name of the nurse.

2. Plaintiff's complaint is DISMISSED as to all other claims for his failure to state a claim upon which relief may be granted.

3. If plaintiff wishes to proceed on any other claims, he may have until January 20, 2016, to file an amended complaint that fixes the problems discussed in this order.

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. Because I am not allowing plaintiff to proceed against defendants Warner and Dolang in their individual capacities, they need not file an answer at this time. Once plaintiff identifies the name of the nurse who examined him on May 10, 2014, the court will direct that defendant to answer the complaint.

5. For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the 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. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 30th day of December, 2015.

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