

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

ROOSEVELT WILLIAMS,

Plaintiff,

v.

SARA FRY and TRAVIS HAAG,

Defendants.

OPINION & ORDER

15-cv-212-jdp

Plaintiff Roosevelt Williams, a prisoner in the custody of the Wisconsin Department of Corrections at the Columbia Correctional Institution, has filed a complaint alleging that prison officials confiscated his wedding ring and funds from his release account, denied him a lower bunk restriction despite him suffering from back pain, and continue to harass and discriminate against African-American prisoners. Plaintiff has also filed a motion for appointment of counsel and a motion for a temporary restraining order. He 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 the complaint and dismiss any portions 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. § 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 considering plaintiff's allegations, I will allow him to proceed on due process and Eighth Amendment claims against defendants but deny him leave to proceed on claims about harassment or racial discrimination. Also, I will deny plaintiff's motions for

appointment of counsel and for preliminary injunctive relief without prejudice to his refileing them at a later date.

ALLEGATIONS OF FACT

Plaintiff Roosevelt Williams is an inmate at the Columbia Correctional Institution. He states that defendant Unit Manager Sara Fry is “stalking him” by ordering investigations of him, “targeting” his wedding ring, and harassing him. Fry ordered defendant Correctional Officer Travis Haag to take plaintiff’s wedding ring. Plaintiff eventually won an inmate grievance about the ring but Fry would not give it back to plaintiff. Fry has also told the business office to deduct funds from plaintiff’s release account without proper authorization.

Plaintiff suffers from chronic back pain and requested a “low bunk” restriction. The Special Needs Committee, of which defendant Fry was a member, denied plaintiff’s request.

Plaintiff says that most of the prison staff members are racist, that he faces constant harassment, and that he is “afraid for [his] life.” He also says that a disproportionate amount of African-American prisoners are held in segregation and the vast majority of African-American prisoner grievances are denied. Plaintiff asks for “[t]he Department of Justice [to] do a ‘sting operation.’”

ANALYSIS

I understand plaintiff to be bringing due process claims regarding the confiscation of his wedding ring and release account funds, an Eighth Amendment deliberate indifference claim about the denial of a low bunk restriction, and claims regarding racial discrimination and harassment.

A. Due process

Plaintiff alleges that defendant Fry harasses him with investigations, confiscated his wedding ring and refused to give it back even after plaintiff won his grievance, and took money out of his release account without the proper authorization. Plaintiff invokes Wis. Admin Code. § DOC 303.19 (titled “Stalking”), but that provision details prohibited conduct by prisoners, not prison staff members, and plaintiff’s more general allegations about being harassed by Fry are too vague to state a federal claim. His more detailed allegations about the confiscation of his wedding ring and release account funds implicate the Fourteenth Amendment’s due process clause.

A procedural due process violation occurs under the Fourteenth Amendment when a state actor deprives an individual of a constitutionally protected interest in “life, liberty, or property” without providing adequate process. Therefore, a due process analysis generally involves a two-step inquiry: (1) whether the defendants deprived the plaintiff of a constitutionally protected liberty or property interest; and (2) if so, whether that deprivation occurred without due process of law. *Doe v. Heck*, 327 F.3d 492, 526 (7th Cir. 2003) (citing *Zinerman v. Burch*, 494 U.S. 113, 125 (1990); *Doyle v. Camelot Care Centers, Inc.*, 305 F.3d 603, 616 (7th Cir. 2002)). Plaintiff has a protected property interest in his prison trust account and in his wedding ring. A plaintiff may not be able to state a due process claim where the deprivation is “random and unauthorized” and pre-deprivation process is unavailable or impractical. *Armstrong v. Daily*, 786 F.3d 529, 539 (7th Cir. 2015); *LaBella Winnetka, Inc. v. Vill. of Winnetka*, 628 F.3d 937, 944 (7th Cir. 2010).

At this early stage of the case, it appears that pre-deprivation process might have been available with regard to the confiscation of release account funds, so I will allow plaintiff to

proceed on a due process claim against defendant Fry. With regard to plaintiff's wedding ring, it appears that plaintiff actually received the process that he was due, yet Fry ignored the grievance ruling to return the ring to plaintiff. This suggests that plaintiff might not be able to sustain a claim against Fry for her "random and unauthorized" confiscation of the property, but at this early stage of the proceedings, I conclude it is appropriate to allow plaintiff to proceed on this arguable claim. Because plaintiff alleges that defendant Haag was involved in the deprivation of the ring, I will allow him to proceed on a due process claim against Haag as well.

B. Eighth Amendment

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). For defendants to be deliberately indifferent to such a need, they must know of the need and disregard it. *Id.* at 834. But "the Eighth Amendment is not a vehicle for bringing claims for medical malpractice." *Snipes v. DeTella*, 95 F.3d 586, 590 (7th Cir. 1996).

Plaintiff's allegation that he suffers chronic pain is sufficient to show he has a serious medical need. I can infer from his allegations that plaintiff is saying that defendant Fry was

aware of his back problems yet helped to deny him a lower bunk restriction. At this early stage in the proceedings, this is sufficient to show that Fry was deliberately indifferent to plaintiff's medical need, so I will allow plaintiff to proceed on an Eighth Amendment claim against Fry.

C. Racial discrimination

Plaintiff includes allegations regarding racist prison staff members and harassment of African-American prisoners, including threats of harm. However, these allegations are far too vague to support constitutional claims. Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Under Rule 8(d), “each allegation must be simple, concise, and direct.” The primary purpose of these rules is fair notice. A complaint “must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.” *Vicom, Inc. v. Harbridge Merchant Serv's, Inc.*, 20 F.3d 771, 775 (7th Cir. 1994). Plaintiff does not provide sufficient detail to put the named defendants in this case or any other prison staff members on notice about what they have done to violate his rights. Plaintiff asks for “[t]he Department of Justice [to] do a ‘sting operation,’” but that is not something this court can force the DOJ to undertake. Plaintiff is free to amend his complaint to clarify these claims, but he will have to explain what each named defendants did to violate his rights.

D. Recruitment of counsel

Plaintiff has also filed a motion for appointment of counsel. Dkt. 10. 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 has provided three letters.

Second, 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). As I have stated in at least one previous case of plaintiff’s, his statements that he has low-level reading and language abilities and is no longer receiving the help of a jailhouse lawyer are not sufficient to grant him counsel at such an early stage of the proceedings. *See Williams v. Smith*, No. 14-cv-789-jdp, at 4-5 (W.D. Wis. July 6, 2015). Plaintiff’s more recent submissions, presumably prepared without the help of his jailhouse lawyer, are relatively well-written and easy to understand. He should be able to litigate the next stage of the proceedings, which is litigating a potential motion for summary judgment based on exhaustion of administrative remedies. Should the case pass the exhaustion stage and plaintiff believes that he is unable to litigate the suit himself, he may renew his motion.

E. Injunctive relief

Plaintiff has also submitted a motion for temporary restraining order. Dkt. 11. Even if I were to consider this filing as a properly filed motion for temporary restraining order under Federal Rule of Civil Procedure 65(b), plaintiff falls far short of showing that this is one of the extremely rare situations in which the court would issue an *ex parte* restraining order changing the status quo of a prisoner's treatment. See *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974) (issuance of temporary restraining orders is generally "restricted to . . . preserving the status quo"); *Jordan v. Wolke*, 593 F.2d 772, 774 (7th Cir. 1979) (While "there may be situations justifying a mandatory temporary injunction compelling the defendant to take affirmative action, . . . mandatory preliminary writs are ordinarily cautiously viewed and sparingly issued.").

Even if I were to consider plaintiff's motion as one for preliminary injunctive relief under Rule 65(a), the motion does not comply with this court's procedures to be followed on motions for injunctive relief. Under these procedures, a plaintiff must file with the court and serve on defendants proposed findings of fact supporting his claim, along with any evidence he has to support those findings and his request for relief. I will deny the motion without prejudice to plaintiff renewing it at a later time.

ORDER

IT IS ORDERED that:

1. Plaintiff Roosevelt Williams is GRANTED leave to proceed on the following claims:
 - a. due process claims against defendants Sara Fry and Travis Haag.
 - b. an Eighth Amendment deliberate indifference claim against Fry.

2. Plaintiff is DENIED leave to proceed on the remainder of his claims.
3. Plaintiff's motion for recruitment of counsel, Dkt. 10, is DENIED without prejudice.
4. Plaintiff's motion for preliminary injunctive relief, Dkt. 11, is DENIED without prejudice.
5. 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.
6. 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.
7. 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.

Entered July 16, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge