

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

JEREMY CLARK,

Plaintiff,

v.

ANGELA MINK, SGT. NEIS and
C.O. WOHLAND,

Defendants.

OPINION AND ORDER

16-cv-108-bbc

This is a proposed civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Jeremy Clark, a prisoner at the Wisconsin Resource Center, alleges that defendants Angela Mink, Sgt. Neis and C.O. Wohland were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Specifically, plaintiff alleges that defendants ignored plaintiff's complaints that he was having suicidal thoughts and needed to be placed under observation. Plaintiff contends that if defendants had placed him under observation, they could have prevented him from carrying out a subsequent suicide attempt in which he ingested high doses of various prescription pills.

Plaintiff has made his initial partial payment of the filing fee and his complaint is ready for screening under 28 U.S.C. §§ 1915 and 1915A. After reviewing plaintiff's complaint, I conclude that plaintiff's allegations are sufficient to state a claim that defendants Mink and Neis violated plaintiff's Eighth Amendment rights by failing to

promptly respond to plaintiff's request to be placed under observation. However, plaintiff has failed to allege sufficient facts to suggest that Wohland ignored plaintiff's complaints or otherwise exhibited deliberate indifference to his mental health issues.

In his complaint, plaintiff alleges the following facts, which for screening purposes I am required to accept as true and review in the light most favorable to him. Perez v. Fenoglio, 792 F.3d 768, 774 (7th Cir. 2015) (citing Thulin v. Shopko Stores Operating Co., LLC, 771 F.3d 994, 997 (7th Cir. 2014)).

ALLEGATIONS OF FACT

On July 7, 2015, while incarcerated at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, plaintiff Jeremy Clark began experiencing suicidal thoughts. He used his cell intercom to alert prison staff. Defendant Neis, a correctional officer at the prison, answered the intercom and advised plaintiff that he would contact the medical unit. A short time later defendant Mink, a prison psychologist, responded to plaintiff's cell. Mink was accompanied by defendant Wohland, a prison correctional officer. Clark told Mink that he felt unstable in his current cell, was having suicidal thoughts and wanted to be placed in observation. Mink tried to reassure plaintiff that he would be fine and told him she could speak with him more later, but at the moment she was extremely busy. As she left, Mink sarcastically said, "If you have thoughts of self harm of any kind just try to wait until after 4:30 p.m."

Later that day, at approximately 4:55 p.m., plaintiff again used the cell intercom to

advise prison staff that he was going to commit suicide and needed to speak with the prison's psychologist. Defendant Neis responded by intercom and stated that plaintiff would have to wait to speak with a psychologist until after dinner was served. Five minutes later, plaintiff used the cell intercom system to tell Neis he had just ingested twenty-eight prescription pills in an attempt to kill himself. Neis sent defendant Wohland and another correctional officer, Lt. Dresen, to plaintiff's cell to check on plaintiff.

When they arrived at plaintiff's cell, Wohland and Dresen spoke with plaintiff about his suicidal thoughts. During the conversation, plaintiff continued to ingest Flurbiprofen and Verapamil tablets while stating that he intended to kill himself because no one cared about his mental health. Lt. Dresen alerted medical staff, who responded and transported plaintiff to the Boscobel Hospital. Staff at that hospital determined that plaintiff needed to be transferred to the University of Wisconsin Hospitals, where he was treated for an overdose of suicidal medication.

OPINION

In order to state a cognizable claim under the Eighth Amendment, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). This standard requires the plaintiff to plead and prove two things: (1) that he was exposed to an objectively serious and substantial risk of injury; and (2) that defendants were aware of that objectively serious risk, but were deliberately indifferent to it. Matos ex. Rel. Matos v. O'Sullivan, 335 F.3d 553, 556

(7th Cir. 2003) (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)).

In this case, there is little question that plaintiff suffered from an objectively serious medical condition. “Suicide is serious harm,” Estate of Cole by Pardue v. Fromm, 94 F.3d 254,261 (7th Cir. 1996), and prisoners possess the “right to be protected from self-destructive tendencies.” Hall v. Ryan, 957 F.2d 402, 406 (7th Cir. 1992). Therefore, the sole question is whether each defendant: (1) subjectively knew that plaintiff was at substantial risk of committing suicide and (2) intentionally disregarded that risk. Matos, 335 F.3d at 557 (citing Estate of Novack v. County of Wood, 226 F.3d 525, 529 (7th Cir. 2000) and explaining that, to be liable, defendants must possess awareness of the significant probability that a prisoner may attempt to commit suicide and refrain from reasonably preventing performance of the act). I will address plaintiff’s claims as to each of the three defendants in turn.

Plaintiff alleges that defendant Mink responded to his cell about five to ten minutes after he first contacted defendant Neis. When Mink arrived, plaintiff explained to her that he was feeling suicidal, in part because other inmates had gained access to his mental health records and were now teasing and laughing at him. Mink spoke with plaintiff for approximately a minute, told him she would speak to him more in depth about his suicidal feelings at a later time when she was free and then walked away from the cell. As Mink walked away, she joked that if plaintiff had any thoughts of self harm, he should “just try to wait until after 4:30 p.m.” These allegations are sufficient to support the drawing of an inference that Mink was aware of the risk that plaintiff might harm himself, but disregarded

that risk. Therefore, Clark will be granted leave to proceed against defendant Mink on his claim that she was deliberately indifferent to his substantial risk of harm.

Later that same day, plaintiff notified defendant Neis that he was still having suicidal thoughts. In response, Neis said plaintiff would have to wait until after the dinner meals were served before he could receive assistance. Approximately five minutes later, plaintiff used the cell intercom to inform Neis that he had ingested twenty-eight prescription pills in an attempt to commit suicide. The same rationale used to determine Mink's actions of deliberate indifference apply here. Neis had knowledge of plaintiff's suicidal condition and acted with "deliberate indifference" by "knowing of and disregarding an excessive risk to inmate health or safety" by requiring plaintiff to wait for help until after dinner meals were served. Farmer, 511 U.S. at 837. Therefore, plaintiff will be granted leave to proceed against defendant Neis on his claim that Neis was deliberately indifferent to plaintiff's substantial risk of self-harm.

Plaintiff also attempts to assert a claim of deliberate indifference against defendant Wohland. Plaintiff mentions Wohland in his complaint only twice: first, when Wohland accompanied Mink to plaintiff's cell after plaintiff's initial request for assistance; and second, when Wohland responded to plaintiff's cell after being informed by Neis that Clark had ingested twenty-eight prescription pills. These actions and events do not support an inference that defendant Wohland was deliberately indifferent to plaintiff's medical needs. Greeno v. Daley, 414 F.3d 645, 656 (7th Cir. 2005). In Greeno, the court of appeals held that a grievance examiner could not be held liable to a prisoner plaintiff when he had referred the plaintiff's medical complaints to medical providers who could be expected to investigate

complaints. Nothing in plaintiff's complaint suggests that defendant Wohland had a duty to plaintiff that he did not perform: he accompanied Mink to plaintiff's cell and he responded to plaintiff's cell at Neis's direction. Unlike defendants Mink and Neis, Wohland did not ignore plaintiff's complaints about suicidal thoughts or delay in providing him assistance. Moreover, Wohland was entitled to defer to Mink's decision regarding how to handle plaintiff's problems. Johnson v. Doughty, 433 F.3d 1001, 1010 (7th Cir. 2006) (explaining that when a prison official investigates medical complaints and reasonably defers to a medical professional, the official incurs no liability). Accordingly, plaintiff's Eighth Amendment claim against Wohland will be dismissed with prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff Jeremy Clark is GRANTED leave to proceed with respect to his Eighth Amendment claims of deliberate indifference against defendants Dr. Angela Mink and Sgt. Neis for failing to take measures to abate plaintiff's attempted suicide after receiving knowledge that a substantial risk of serious harm existed. Plaintiff's complaint is DISMISSED with prejudiced as to defendant Wohland for failure to state a claim upon which relief may be granted.

2. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyers will be representing defendants, he should serve the lawyers directly rather than the defendants.

The court will disregard any documents submitted by plaintiff unless he shows on the court's copy that he has sent a copy to the defendant or the defendant's lawyers.

3. 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.

4. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants.

5. 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 31st day of March, 2016.

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