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

SIDNEY L. COLEMAN,

Plaintiff,

v.

OPINION & ORDER

Case No. 18-cv-902-wmc

DAVID J. MAHONEY and
DANE COUNTY,

Defendants.

Plaintiff Sidney Coleman brings this action under 42 U.S.C. § 1983 against defendants David J. Mahoney and Dane County. Coleman claims that the conditions of the Dane County Jail violate his constitutional rights. The complaint is now before the court for screening pursuant to 28 U.S.C. § 1915A. After review, the court concludes that plaintiff has articulated a Fourteenth Amendment due process claim related to the environmental hazards, and that he may proceed against both defendants.

ALLEGATIONS OF FACT[1]

Coleman is currently a resident of Eau Claire, Wisconsin. However, he was being held at the Dane County Jail when he filed his complaint in November of 2018, and he alleges that he has been in and out of the jail on many occasions since 2004. Coleman claims that the plumbing at the jail was corroded, and there was lead in the drinking water. He further claims that the air vents were clogged, leaving so much dust in the air that

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[1] Courts must read allegations in *pro se* complaints generously, resolving ambiguities and drawing reasonable inference in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in plaintiff's complaint.

Coleman had difficulty breathing. He also complains that he saw flies and crawling bugs as well as black and green mold.

OPINION

While not apparent in his complaint, the court will infer for purposes of screening that plaintiff was a pretrial detainee and not a convicted prisoner during his time at the jail, so his claims are governed by the due process clause of the Fourteenth Amendment. *Smith v. Dart*, 803 F.3d 304, 309–10 (7th Cir. 2015). Historically, the Seventh Circuit has applied the Eighth Amendment standard to detainee's constitutional claims, but it changed course based on the Supreme Court's reasoning in *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015), that excessive force claims by pretrial detainees are governed by the due process clause of the Fourteenth Amendment. Specifically, in *Miranda v. Cty. of Lake*, 900 F.3d 335 (7th Cir. 2018), the Seventh Circuit extended the logic in *Kingsley* to medical care claims. *Id.* at 352-53. Given that a prisoner's medical care is just one subset of conditions of confinement claims, it is reasonable to infer that *Kingsley* applies with equal force to the type of conditions of confinement claims plaintiff outlines here. Indeed, other courts in this circuit have assumed the same. *See Moore v. Germaine*, No. 18-cv-01378-JPG, 2018 WL 4027575, at *2 (S.D. Ill. Aug. 23, 2018); *McWilliams v. Cook Cty.*, No. 15 C 53, 2018 WL 3970145, at *5 (N.D. Ill. Aug. 20, 2018) ("*Miranda*'s logic reaches the broader genus of conditions of confinement claims, of which medical treatment claims are merely a species.") (citation omitted).

Therefore, under *Kingsley* and *Miranda*, the failure to provide adequate conditions of confinement violates the Due Process Clause if: (1) the defendants acted with purposeful, knowing, or reckless disregard of the consequences of their actions; and (2) the defendants' conduct was objectively unreasonable. *Miranda*, 900 F.3d at 352–53. While it is not enough to show negligence, the plaintiff is not required to prove the defendant's subjective awareness that the conduct was unreasonable. *Id.* at 353.

Plaintiff challenges four conditions of his confinement: (1) the water, (2) dust in the air, (3) mold, and (4) pests. First, with respect to the lead in the water, while plaintiff has included very few allegations, his alleged exposure to lead at the Dane County Jail appears sufficient to permit an inference that he was subjected to conditions that create a serious risk of injury, at least under the generous standard to which pro se litigants are entitled at the screening stage. Exposure to lead in drinking water can cause significant health issues, and indeed, plaintiff claims that he has suffered consequences of these environmental exposures, including headaches and stomach pains.

While plaintiff does not explicitly state that Mahoney was aware of these conditions, it is reasonable to infer at this stage that Mahoney was aware of the lead in the water at the jail. *See Mitchell v. Dane Cty. Sheriff Dept.*, No. 16-cv-352, slip op. at *6 (W.D. Wis. Dec. 2, 2016). Likewise, at this early stage, the court will infer that defendant Mahoney's inaction and decision to continue to place inmates in a position to have to drink that water permits a reasonable inference of an objectively unreasonable response to the potential harm of lead exposure.

The court will also permit plaintiff to proceed against Dane County. Under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), to state a claim against a county, plaintiff must allege that the alleged constitutional violation was "caused by: (1) an official policy adopted and promulgated by [the county's] officers; (2) a governmental practice or custom that, although not officially authorized, is widespread and well settled; or (3) an official with final policy-making authority." *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010). Reading plaintiff's complaint generously, it is reasonable to infer that Dane County continued an ongoing practice of routinely placing inmates in cells with potential for lead exposure despite knowing about the danger posed by those conditions. As such, plaintiff will be permitted to proceed against Dane County on a conditions-of-confinement claim concerning the lead in the Dane County Jail's water supply.

As plaintiff proceeds with this claim, he should be aware that at summary judgment or trial, he likely will have to come forward with admissible evidence sufficient to allow a reasonable jury to find in his favor on each element of his claim. *Henderson v. Sheahan*, 196 F.3d 839, 848 (7th Cir. 1999). In doing so, plaintiff should pay particular attention to *Carroll v. DeTella*, 255 F.3d 470 (7th Cir. 2001). In *Carroll*, while plaintiff claimed that prison water was contaminated with lead and radium, the court affirmed summary judgment in defendants' favor because the plaintiff did not have sufficient evidence that the level of contaminants was harmful. In particular, the court concluded that it was not sufficient for the plaintiff to show that the levels of radium were above the levels recommended by the Environmental Protection Agency and that prison staff received free

bottled water so that they did not have to drink from the local water supply. *Id.* The court stated that "failing to provide a maximally safe environment, one completely free from pollution or safety hazards, is not" a violation of the Constitution. *Id.* at 472–73. While plaintiff has pled sufficient facts to proceed on this claim, he will have to adduce more specific evidence to prove his claims at summary judgment or trial. *E.g., Mitchell v. Dane Cty. Sheriff Dep't*, No. 16-cv-352-wmc, 2018 WL 851391, at *6 (W.D. Wis. Feb. 13, 2018) (granting summary judgment to defendants on claim about lead contamination and asbestos exposure at the Dane County Jail because the plaintiff had failed to submit evidence of actual exposure to either contaminant).

However, plaintiff's allegations about dust, bugs and mold do not support a constitutional claim as currently pled. Indeed, plaintiff has not provided any details about how pervasive the dust, insects or mold has been, much less where in the jail he has been exposed to these conditions or whether Mahoney or any other jail staff knew about these conditions. If, for example, he saw a few bugs in his cell every day, that would not give rise to a reasonable inference that he was subjected to objectively unreasonable conditions of confinement. *Compare Smith v. Dart*, 803 F.3d 304, 312-13 (7th Cir. 2015) ("[T]he mere presence of a laundry list of pests, without more, is not sufficient to state a constitutional claim."), *with Sain v. Wood*, 512 F.3d 886 (7th Cir. 2008) (while unpleasant, allegation of cockroach infestation spanning six years, including being bitten twice, did not constitute a constitutional violation), *and Antonelli v. Sheahan*, 81 F.3d 1422, 1431 (7th Cir. 1996) (prisoner stated claim under the Eighth Amendment by alleging that "cockroaches were everywhere, crawling on his body (along with mice) and constantly awakening him, and

causing the environment to be unsanitary") (internal quotations omitted). While plaintiff may seek leave to amend his complaint to provide additional details about the severity of the dust, bug and mold problems, the court will not grant him leave to proceed on a Fourteenth Amendment claims related to these conditions as currently pled.

ORDER

IT IS ORDERED that:

1. Plaintiff Sidney Coleman is GRANTED leave to proceed on Fourteenth Amendment conditions of confinement claims based on his alleged exposure to lead against defendants Sheriff Dave Mahoney and Dane County.

2. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon 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 defendant. 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 the 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. If plaintiff moves 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 9th day of March, 2020.

BY THE COURT:

/s/______________________________
WILLIAM M. CONLEY
District Judge