IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DAVID CZAPIEWSKI,

Plaintiff,

v.

TODD RUSSELL, JOHN O'DONOVAN,
WILLIAM POLLARD and ANTHONY MELI,

Defendants.

OPINION and ORDER

15-cv-208-bbc

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Plaintiff David Czapiewski, a prisoner at Waupun Correctional Institution in Waupun, Wisconsin, filed this civil rights action under 42 U.S.C. § 1983, contending that his First, Eighth and Fourteenth Amendment rights were violated when Waupun Correctional Institution officials punished him for expressing suicidal thoughts. In an order entered in this case on July 18, 2016, I granted defendants' motion for summary judgment and dismissed each of plaintiff's claims.

Now plaintiff has filed a motion under Fed. R. Civ. P. 59 to amend or alter the July 18, 2016 order entering judgment for defendants. Plaintiff advances two arguments in his motion to amend. First, plaintiff argues that his suicidal ideation on December 14, 2011 was not false and that he really did intend to commit suicide. Second, he argues that defendant Todd Russell's statement on April 21, 2012 was per se deliberate indifference. Because neither of these arguments involves any newly discovered evidence or provides

evidence of a manifest error of law or fact, I am denying plaintiff's motion.

OPINION

The purpose of a motion to alter or amend a judgment is to "bring the court's attention to newly discovered evidence or to a manifest error of law or fact." Neal v. Newspaper Holdings, Inc., 349 F.3d 363, 368 (7th Cir. 2003). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" Oto v. Metropolitan Life Insurance Co., 224 F.3d 604, 606 (7th Cir. 2000) (quoting Sedrak v. Callahan, 987 F. Supp. 1063, 1069 (N.D. Ill. 1997)). The motion must be more than a simple reargument of the merits of the case. Neal, 349 F.3d at 368. Relief under Rule 59 is an "extraordinary remed[y] reserved for the exceptional case." Foster v. DeLuca, 545 F.3d 582 (7th Cir. 2008) (citing Dickerson v. Board of Education, 32 F.3d 1114, 1116 (7th Cir. 1994)).

A. First Amendment Claim

Plaintiff first contends that his suicidal ideation on December 14, 2011 was not false and that he really did intend to commit suicide. But this precise argument was fully asserted, considered and ultimately rejected on summary judgment. After reviewing the record, I concluded on summary judgment that any reasonable jury would find that defendants were justified in their belief that plaintiff was manipulating the use of his emergency button to complain about his mail problem. As I concluded on summary judgment, "plaintiff's

subjective contention that he was not lying is not dispositive. Instead, the important inquiry is whether defendants reasonably believed plaintiff was lying." Dkt. #70, at 7 (citing Heffernan v. City of Paterson, N.J., 136 S. Ct. 1412, 1418 (2016); Weicherding v. Riegel, 160 F.3d 1139, 1143 (7th Cir. 1998)). Defendant Billington reasonably concluded after responding to plaintiff's cell that plaintiff did not intend to harm himself. Defendant Russell reasonably relied on Billington's account in issuing plaintiff a conduct report. Plaintiff has not shown in his motion to amend that I made any manifest error of law or fact. Therefore, my original ruling on plaintiff's First Amendment claim stands.

B. Eighth Amendment Claim

Second, plaintiff argues that defendant Russell displayed deliberate indifference towards him when he stated, "If the sergeant resolves the issue and you don't go to observation you will get another ticket for lying. You can't change your mind or you will get a ticket." On summary judgment I concluded that defendant Russell acted reasonably in referring plaintiff's medical complaints to nearby officers. In his motion to amend, plaintiff contends that defendant Russell's statement is per se deliberate indifference. As I explained in the earlier order, I disagree with plaintiff.

A plaintiff must satisfy two elements to prove deliberate indifference: (1) that he or she suffered an objectively serious harm that presented a substantial risk to his or her safety, and (2) that the defendants were deliberately indifferent to that risk. Minix v. Canarecci, 597 F.3d 824, 831 (7th Cir. 2010) (citing Collins v. Seeman, 462 F.3d 757, 760 (7th Cir.

2006)). The first element is satisfied because "it goes without saying that suicide is a serious harm." Collins, 462 F.3d at 760. To prove the second element, a prisoner must show that the defendants (1) subjectively knew that the prisoner was at substantial risk of committing suicide; and (2) intentionally disregarded that risk. Id. at 761. On summary judgment, I found that no reasonable jury could have concluded that defendant Russell intentionally disregarded the risk that plaintiff might harm himself.

Defendant Russell denies making the statement plaintiff relies upon. However, even if he did make the statement, it is not enough by itself to constitute per se deliberate indifference. When plaintiff pressed his emergency button on April 21, 2012, defendant Russell responded promptly in referring plaintiff to the two officers stationed immediately outside plaintiff's cell. The two officers then notified their supervisor. The officers and their supervisor all spoke with plaintiff to calm him down when he expressed suicidal thoughts. The officers notified Psychology Services and assessed plaintiff. After assessment, plaintiff was taken to a clinical observation cell. No reasonable jury could find that defendant Russell's response was reckless. See Collins, 462 F.3d at 762 (affirming summary judgment on ground that "there is no evidence from which a jury could infer that [defendant] recklessly or intentionally disregarded a known risk of suicide" when defendant "informed the control room that [plaintiff] had requested the assistance of a crisis counselor and was 'feeling suicidal.'").

This case is distinguishable from Haley v. Gross, 86 F.3d 630 (7th Cir. 1996), cited in plaintiff's motion. In Haley, prison officers responded to an incident in which two

prisoners were verbally and physically fighting in their cell. Haley, 86 F.3d at 637. One of the officers threatened to leave the prisoners in the cell without taking any further action. Id. When one of the prisoners threatened to start a fire in the cell, the officer responded, "Well, go ahead you nigger, burn your black asses. You've got to be in there." Id. Haley involved a hateful and explicit comment that unequivocally directed the prisoner to burn both himself and his cell mate. In this case, defendant Russell, as well as several other officers, responded promptly to plaintiff's cell and ultimately had plaintiff assessed by Psychology Services.

Plaintiff has not shown in this motion or in his original motion for summary judgment that defendant Russell's response to plaintiff's emergency was unreasonable or inappropriate. By itself, Russell's statement was not so egregious as to make an otherwise reasonable response per se unconstitutional. Therefore, plaintiff's motion to amend the July 18, 2016 order will be denied.

ORDER

IT IS ORDERED that plaintiff's motion to amend the July 18, 2016 order, dkt. #73, is DENIED.

Entered this 21st day of September, 2016.

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