

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

FREDRICK ANDREW MORRIS,

Plaintiff,

v.

JASON T. ZEIMER,

Defendant.

OPINION AND ORDER

16-cv-625-bbc

On January 26, 2017, this court dismissed pro se plaintiff Fredrick Andrew Morris's complaint for failure to provide notice of his claims in accordance with Fed. R. Civ. P. 8. Dkt. #9. Plaintiff, who is an inmate at the Green Bay Correctional Institution, has filed two proposed "amended complaints" alleging that defendant Jason Zeimer violated his constitutional rights by ignoring his threats of suicide and requests for help and then recklessly allowing plaintiff to harm himself. Dkt. ##10 and 12. Because it appears that the later-filed amended complaint, dkt. #12, is a more complete, signed version of the earlier-filed amended complaint, I will consider the second amended complaint the operative pleading in this case and screen it under 28 U.S.C. §§ 1915(e)(2) and 1915A. Flannery v. Recording Industry Association of America, 354 F.3d 632, 638 (7th Cir. 2004) (amended complaint replaces any earlier complaint and "renders the original complaint void").

Having reviewed the second amended complaint, dkt. #12, I conclude that plaintiff may proceed on his Eighth Amendment claim against defendant Zeimer.

Plaintiff fairly alleges the following facts in his second amended complaint.

ALLEGATIONS OF FACT

While plaintiff Fredrick Andrew Morris was a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, he saved a lot of pills in the corner of a trash bag in order to commit suicide after a visit with his mother. Plaintiff's mother did not show up for her scheduled visit on March 8, 2016. Plaintiff had been sleeping but began to cry when he realized that his mother had not arrived during visiting hours. He removed the pills from the trash bag and placed them in a cup. When defendant Jason Zeimer, a correctional officer at the Columbia Correctional Institution, came to do rounds at about 2:15 p.m., plaintiff told defendant that he was feeling suicidal, showed defendant the cup of pills and told defendant that he was going to take the pills in order to kill himself. Plaintiff asked defendant to see or speak with prison psychological staff. Defendant told plaintiff to "write a green slip to see PSU sometime," and walked away without calling or radioing anyone. Plaintiff took the pills and experienced a drug overdose.

OPINION

I understand plaintiff to be raising a claim that defendant Zeimer ignored plaintiff's threats of suicide and requests for help and then recklessly allowed plaintiff to harm himself,

in violation of the Eighth Amendment. As explained in the court's previous order, a prison official can be held liable under the Eighth Amendment for self-inflicted harms committed by a prisoner if the official "subjectively knew" of a specific risk of self-harm, but intentionally disregarded that risk. Collins v. Seaman, 462 F.3d 757, 761 (7th Cir. 2006). This standard is part of the broader standard called "deliberate indifference" to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). The prison official's failure to prevent harm (including self-harm) violates the Constitution only when the official "knows of and disregards an excessive risk to inmate health or safety." Gevas v. McLaughlin, 798 F.3d 475, 482 (7th Cir. 2015) (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)). See also Brown v. Budz, 398 F.3d 904, 915-16 (7th Cir. 2005) (to state a claim upon which relief can be granted, plaintiff must allege that defendant's conduct disregarding specific known risk caused substantial harm to inmate). The prisoner must also show that the injury would not have occurred if the prison official had not disregarded the risk. Henderson v. Sheahan, 196 F.3d 839, 848 (7th Cir. 1999). I conclude that plaintiff's new allegations are sufficient to state a claim under that standard. Plaintiff alleges that he told defendant that he intended to kill himself, showed defendant the pills that he had collected and asked defendant for help, all of which defendant ignored. Plaintiff also alleges that he suffered an injury by overdosing on the pills. Accordingly, plaintiff may proceed on his Eighth Amendment claim against defendant Zeimer.

ORDER

IT IS ORDERED that

1. Plaintiff is GRANTED leave to proceed on his claim that defendant Jason Zeimer ignored plaintiff's threats of suicide and requests for help and then recklessly allowed plaintiff to harm himself, in violation of the Eighth Amendment.

2. 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. 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 for the defendants.

3. 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.

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 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 22d day of May, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge