IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LORENZO GUYTON,

OPINION and ORDER

Plaintiff,

17-cv-45-bbc

v.

JEREMY WILTZIUS, SERGEANT CHATMAN,
PATRICIA A. SCHLAEFFER, SERGEANT BIERKIRCHER,
KATHY WHALEN, RN, JAMIE GOHDE, RN and
MICHAEL A. DITTMANN,

Defendants.

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This is a proposed civil action for declaratory and monetary relief brought pursuant to 42 U.S.C. § 1983 against seven employees of the Columbia Correctional Institution. Plaintiff Lorenzo Guyton alleges that he fell while cleaning a cell covered with blood and that various prison officials failed to provide him appropriate medical treatment for his injuries. He brings claims under both the Eighth Amendment and state negligence law.

Because plaintiff is a prisoner, I am required under the 1996 Prisoner Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing a pro se litigant's complaint, the court must read the complaint's allegations

generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

After reviewing the complaint, I conclude that plaintiff may proceed on his Eighth Amendment and negligence claims against defendants Whalen, Wiltzius, Schlaeffer, Bierkircher, Dittmann and Gohde. Plaintiff may also proceed on his negligence claim against defendant Chatman arising from his exposure to another inmate's blood. I am dismissing plaintiff's negligence claim against Chatman arising from his back injury for failure to state a claim upon which relief may be granted.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Lorenzo Guyton is incarcerated at the Stanley Correctional Institution. At the time of the events giving rise to his claims, he was incarcerated at the Columbia Correctional Institution, where he had a work assignment as a janitor. Defendants are employees at the Columbia prison. Defendant Jeremy Wiltzius is a security supervisor; defendants Chatman and Bierkircher are correctional sergeants; defendant Patricia A. Schlaeffer is a correctional officer; defendant Kathy Whalen is a nurse; defendant Jamie Gohde is the health services unit manager; and defendant Michael A. Dittmann is the warden.

On June 3, 2016, defendant Chatman told plaintiff to clean a cell where another inmate had attempted suicide and "lost a considerable amount of blood." Plaintiff did not receive "protective equipment" or instructions before he began cleaning, but he complied

with Chatman's request and gathered "what supplies were available." (Plaintiff does not identify the supplies he had.) Plaintiff slipped and fell in the blood and chemicals while cleaning the cell, causing him severe back pain and "expos[ure] to another inmate's blood."

Defendant Whalen "was made aware" of plaintiff's injuries but declined to see him after the incident. She instead directed him to submit a health services request. Defendant Wiltzius also learned of plaintiff's injuries, but refused to take plaintiff to the health services unit. Instead, Wiltzius directed plaintiff to obtain pain medication from another inmate. After taking medication given to him by two other inmates, plaintiff experienced "adverse side effects" and mental distress. (Plaintiff does not say what the medication was.) The medication did not alleviate his back pain.

On June 6, 2016, plaintiff "was seen" for his back pain. (Plaintiff does not say who saw him.) He was prescribed ibuprofen and an ice pack.

In the middle of the night on June 6, plaintiff awoke to severe back pain, including "back spasms and shooting pain throughout his back and lower body" and loss of bladder control. At around 3:00 a.m., plaintiff informed defendant Schlaeffer that his pain was so severe he wanted to kill himself and that "if he did not get help, he would do it." Schlaeffer did not secure medical treatment or otherwise help him. Instead, Schlaeffer told plaintiff that "it would get better" and that there were no nurses or psychologists on third shift to help him. After Schlaeffer left plaintiff lying on the floor, "covered in urine," plaintiff attempted suicide by tying a bag over his head and tying his hands.

When Schlaeffer discovered plaintiff at around 5:00 a.m., she removed the bag from

plaintiff's head. (Plaintiff does not say whether he needed medical treatment as a result of oxygen deprivation.) Plaintiff was then placed nude in a cell that was cold, insect-ridden and covered in urine, feces and "other bodily fluids."

Plaintiff first received treatment for his back pain on June 7, 2016. (Plaintiff does not describe the treatment he received.) The next day, defendant Bierkircher distributed additional medication to plaintiff, but Bierkircher failed to review the bottle, even though it was clearly labeled. Bierkicher provided plaintiff what plaintiff thought was ibuprofen, but was actually bupropion, a psychotropic medication. Plaintiff suffered side effects from the drug, including emotional distress, paranoia, "auditory issues," pain and "psychomotor agitation." Plaintiff received emergency room treatment at the local hospital for his symptoms.

Defendants Dittmann and Gohde were aware that the procedures for distributing medications were ineffective and that officers were not adequately trained in distributing medication.

Plaintiff continues to suffer from back pain and emotional distress arising from his exposure to another inmate's blood.

OPINION

A. Summary of Plaintiff's Claims

I understand plaintiff to be raising the following claims:

(1) defendant Chatman's negligence caused plaintiff to slip and fall;

(2) defendant Chatman's negligence caused plaintiff's exposure to another inmate's blood;

(3) after plaintiff injured his back, defendant Whalen refused to provide him medical care;

(4) defendant Wiltzius directed plaintiff to obtain pain medication from other prisoners rather than taking plaintiff to the health services unit;

(5) when plaintiff told defendant Schlaeffer that he was in pain and feeling suicidal, she refused to help him;

(6) defendant Bierkircher provided plaintiff the wrong medication to treat his back pain, causing him to overdose; and

(7) defendants Dittmann and Gohde failed to provide adequate training to staff regarding medication distribution.

Plaintiff states in his complaint that his claims against defendant Chatman are limited to a negligence theory. He asserts his remaining claims under both the Eighth Amendment and the Wisconsin common law of negligence.

In addition to these claims, plaintiff includes allegations about the conditions of the observation cell where he was placed after he attempted suicide. However, because plaintiff has not tied these allegations to a particular defendant or included them in his summary of claims at the end of his complaint, I understand that plaintiff included these allegations as background information and did not intend to raise a separate claim.

B. Legal Standard

The Eighth Amendment requires prison officials to provide medical care to those being punished by incarceration. Estelle v. Gamble, 429 U.S. 97, 103-04 (1976). An official may violate an inmate's Eighth Amendment right to medical care if that official is "deliberately indifferent" to a "serious medical need." Id. at 104. A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the need for treatment is obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening to be serious. Id. at 585. A condition may also be serious if it carries a risk of permanent serious impairment if left untreated, results in "needless pain and suffering," Gutierrez v. Peters, 111 F.3d 1364, 1371 (7th Cir. 1997), or otherwise subjects an inmate to a "substantial risk of serious harm," Farmer v. Brennan, 511 U.S. 825, 847 (1994).

"Deliberate indifference" means that an official was aware that an inmate needed medical treatment, but consciously disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). A delay in treatment may constitute deliberate indifference if the delay made an injury worse or unnecessarily extended an inmate's pain. Estelle, 429 U.S. at 104-05; Gayton v. McCoy, 593 F.3d 610, 619 (7th Cir. 2010); Edwards v. Snyder, 478 F.3d 827, 832 (7th Cir. 2007). Therefore, under this standard, plaintiff's Eighth Amendment claims have three elements:

(1) Did plaintiff need medical treatment?

(2) Did defendants know that plaintiff needed treatment?

(3) Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Plaintiff's negligence claims are governed by Wisconsin state law. To prove a claim for negligence, plaintiff must show that defendants breached a duty owed to plaintiff and the breach caused plaintiff's injuries. Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865.

C. Defendant Chatman

I understand plaintiff to be alleging that defendant Chatman's failure to provide plaintiff adequate training and equipment both (1) caused plaintiff to fall and suffer severe back pain and (2) subjected him to the risk of exposure to another inmate's blood. I am dismissing the first claim for failure to state a claim upon which relief may be granted, but I will allow plaintiff to proceed on the second claim.

The problem with the first claim is that there is no connection between the alleged act of negligence (failing to provide special equipment and training) and the injury (slipping and falling). Kramschuster v. Shawn E., 211 Wis. 2d 699, 704, 565 N.W.2d 581, 583 (Ct. App 1997) (citing Nieuwendorp v. American Family Ins. Co., 191 Wis. 2d 462, 475, 529 N.W.2d 594, 599 (1995) (a claim for negligence must include "a causal connection between the defendant's conduct and the injury sustained"). Plaintiff's theory seems to be that a person must be provided special equipment or training if that person is going to clean slippery floors, but plaintiff does not identify what that special equipment or training might be. Plaintiff acknowledges that he knew that there was blood on the floor, which put him

on notice that he needed to use care when moving about the cell.

As to plaintiff's second claim, plaintiff does not explain what protective equipment he needed but did not have, but I will infer that plaintiff did not have gloves or a mask, which could have helped him avoid contact with the blood. This leaves the question of injury. Plaintiff does not allege that the blood was contaminated or that he otherwise suffered a physical injury because of his exposure to the blood. However, he alleges that he suffered various types of emotional distress, which is sufficient under Wisconsin law. Camp ex. rel. Peterson v. Anderson, 2006 WI App 170, 295 Wis. 2d 714, 721 N.W.2d 146.

D. Defendant Whalen

Plaintiff alleges that defendant Whalen, a nurse, refused to see plaintiff when she learned that he had been injured falling, but instead instructed him to fill out a health service request. I conclude that plaintiff has stated a claim under both the Eighth Amendment and state law as to Whalen.

As to the first element of an Eighth Amendment claim, plaintiff alleges that he was in great pain after he fell, which is sufficient at the pleading stage to show that he had a serious medical need. Gutierrez, 111 F.3d at 1371 (medical need may be serious if deliberately withholding care results in "needless pain and suffering"). As to the second element, plaintiff alleges that defendant Whalen was informed that he had been injured.

As to the third element, the question is whether defendant Whalen consciously failed to take reasonable steps to help plaintiff when he she directed him to submit a health service

request. If Whalen knew that plaintiff needed immediate treatment, that would not be a reasonable response. It is not clear from the complaint exactly what defendant Whalen knew about plaintiff's injuries, but it is reasonable to infer that she knew plaintiff was in serious pain. Accordingly, I will allow plaintiff to proceed on this claim. At summary judgment or trial, plaintiff will need to provide specific evidence that Whalen knew that he needed immediate treatment and could not wait to schedule an appointment.

Because the standard for negligence is less demanding than the Eighth Amendment standard, allegations that state a claim under the Eighth Amendment generally state a claim for negligence. For these reasons, I find that plaintiff also states a claim against Whalen for negligence.

E. Defendant Wiltzius

Plaintiff alleges that defendant Wiltzius, a correctional officer, knew about plaintiff's injuries, but refused to take plaintiff to the health services unit. Instead, Wiltzius directed plaintiff to take pain medication from other prisoner. I conclude that plaintiff has stated a claim against Wiltzius under both the Eighth Amendment and state law.

For the same reasons discussed in the context of plaintiff's claim against defendant Whalen, plaintiff has adequately alleged that he had a serious medical need and that defendant Wiltzius was aware of that need. It is also reasonable to infer that Wiltzius consciously failed to take reasonable measures to help plaintiff.

First, it is not clear why Wiltzius did not take plaintiff to the health services unit. If

defendant Whalen instructed Wiltzius not to bring plaintiff for treatment, that could raise a question whether Wiltzius was required to do more. Hayes v. Snyder, 546 F.3d 516, 526-28 (7th Cir. 2008) (nonmedical staff may rely on judgment of health care professionals unless it is obvious that care is needed). However, at this stage of the proceedings, it is reasonable to infer that defendant Wiltzius had the authority to seek medical care for plaintiff.

Second, as to defendant Wiltzius's decision to direct plaintiff to obtain medication from other prisoners, Wiltzius may have had good intentions, but it does not appear that Wiltzius is a medical professional or had any medical basis for concluding that it would be appropriate for any prisoner to take another prisoner's medication. Plaintiff does not identify specifically the medication that he took (and perhaps he does not know), but taking medication intended for someone else is an inherently risky activity and it is reasonable to infer that Wiltzius was aware of this risk.

F. Defendant Schlaeffer

I understand plaintiff to be raising two claims against Schlaeffer: (1) she failed to provide adequate medical treatment for plaintiff's severe back pain; and (2) she failed to intervene when plaintiff posed a serious threat of suicide. I conclude that plaintiff may proceed on both claims under both the Eighth Amendment and state law.

1. Back pain

Plaintiff alleges that he informed Schlaeffer of his back pain after she found him lying on the floor around 3:00 a.m., but she failed to do anything to help him get medical treatment. This claim is similar to plaintiff's claims against defendants Whalen and Wiltizus and I conclude that plaintiff has stated a claim against defendant Schlaeffer for essentially the same reasons. Plaintiff has adequately alleged that Schlaeffer knew that he needed immediate treatment, but refused to help him.

2. Suicide attempt

A risk of suicide is treated like any other risk of harm under the Eighth Amendment. If a prison official is aware of a substantial risk that a prisoner will seriously harm himself, the official may not consciously refuse to help the prisoner. Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 261 (7th Cir. 1996).

In this case, plaintiff alleges that he told Schlaeffer that he was going to kill himself if he did not get pain relief, which is sufficient to put Schlaeffer on notice of a substantial risk of harm. Sanville v. McCaughtry, 266 F.3d 724, 737–38 (7th Cir. 2001) ("[I]f [the prisoner] told [the defendants] that he was suicidal, that alone should have been enough to impute awareness of a substantial risk of suicide.") (internal quotations omitted). Because plaintiff alleges that Schlaeffer did nothing to help him, it is reasonable to infer that she consciously disregarded the risk.

It is not clear whether plaintiff actually harmed himself. Although he says that he put

a bag over his head, he does not allege that he required any medical treatment as a result. However, a prisoner may bring an Eighth Amendment claim even without a physical injury, Devbrow v. Kalu, 705 F.3d 765, 769 (7th Cir. 2013); Smith v. Peters, 631 F.3d 418, 420-21 (7th Cir. 2011) , so I will allow plaintiff to proceed on this claim as well.

G. Defendant Bierkircher

Plaintiff alleges that Bierkircher gave him a dose of bupropion, plaintiff's psychotropic medication, instead of ibuprofen, causing plaintiff to overdose and suffer a number of adverse health consequences. If defendant Bierkircher simply misread the medication bottle, that conduct would suggest nothing more than negligence at most. However, if Bierkircher was intentionally failing to take basic steps to prevent a mistake, this could qualify as a conscious refusal to act reasonably. Because it is unclear at this stage of the proceedings whether Bierkircher's conduct may have been deliberately indifferent or simply negligent, I will allow plaintiff to proceed on both claims. At summary judgment or trial, plaintiff will have to come forward with specific evidence on these claims.

H. Defendants Dittmann and Gohde

Plaintiff alleges that Dittmann and Gohde failed to develop effective procedures for controlling medications and training staff on medication distribution. Again, these allegations are more suggestive of negligence than deliberate indifference. Further, if defendant Bierkircher simply misread the medication bottle, it is unlikely that better

procedures or training would have made a difference. However, if defendants knew there was a problem and they failed to do anything about it, that could support a claim under the Eighth Amendment. At this stage of the proceedings, I will infer that better training or procedures could have prevented the harm and I will allow plaintiff to proceed on a claim under both the Eighth Amendment and state law. However, at summary judgment or trial, plaintiff will have to come forward with specific evidence showing that there was a problem with the procedures or training related to medication distribution, that defendants Dittman and Gohde were aware of that problem and refused to take reasonable steps to solve it and that there was a causal connection between that problem and plaintiff's injury.

ORDER

IT IS ORDERED that

1. Plaintiff Lorenzo Guyton is GRANTED leave to proceed on the followig claims:

(1) defendant Chatman's negligence caused plaintiff's exposure to another inmate's blood;

(2) after plaintiff injured his back, defendant Whalen refused to provide him medical care, in violation of the Eighth Amendment and state law;

(3) defendant Wiltzius directed plaintiff to obtain pain medication from other prisoners rather than taking plaintiff to the health services unit, in violation of the Eighth Amendment and state law;

(4) when plaintiff told defendant Schlaeffer that he was in pain and feeling suicidal,

she refused to help him, in violation of the Eighth Amendment and state law;

(5) defendant Bierkircher provided plaintiff the incorrect medication to treat his back pain, causing plaintiff to overdose, in violation of the Eighth Amendment and state law; and

(6) defendants Dittmann and Gohde failed to enact adequate procedures and provide adequate training to staff regarding medication distribution, in violation of the Eighth Amendment and state law.

2. Plaintiff's claim that defendant Chatman's negligence caused plaintiff to slip and fall is DISMISSED for failure to state a claim upon which relief may be granted.

3. 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 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 defendants.

4. Once the defendants answer the complaint, the clerk of court will set a telephone conference before Magistrate Judge Stephen Crocker. At the conference, Magistrate Judge Crocker will set a schedule for the case.

5. 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 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 defendants or their attorney.

6. Plaintiff should keep a copy of all documents for his own files. If he does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. 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 29th day of March, 2017.

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