IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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STEVEN A. CONWAY,

Plaintiff,

v.

ROBERT HENZE, UNKNOWN JEFFERSON COUNTY JAIL STAFF, TOM SCHLEITWILER, TOM TOSHNER, CAROL MELODY and MEL HAGGART,

Defendants.

OPINION AND ORDER

98-C-402-C

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This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983 in which plaintiff Steven A. Conway contends that defendants Robert Henze, Tom Schleitwiler, Tom Toshner, Carol Melody and Mel Haggart violated his rights under various state and federal laws during his five-month incarceration in the Jefferson County jail in 1993-94, defendants Schleitwiler, Toshner, Melody and Haggart by providing inadequate psychiatric treatment and defendant Henze by subjecting him to unlawful conditions of confinement. In addition, plaintiff contends that defendant Henze violated the Americans with Disabilities Act, 42

U.S.C. §§ 12101-12213, by denying him access to showers and hygiene products, the Fourth Amendment by failing to protect his privacy and various provisions of the Wisconsin Mental Health Act.

Subject matter jurisdiction is present. 28 U.S.C. § 1331. Presently before the court is defendants' motion for summary judgment. The motion will be granted because plaintiff has not introduced facts from which a jury could conclude that defendants violated his rights under the Fourth Amendment, Fourteenth Amendment or the ADA. Because plaintiff presents no cognizable federal claims, I will decline to exercise supplemental jurisdiction over his state law claims. Despite the able argument of plaintiff's attorneys, the law does not support plaintiff's claims. However, plaintiff's attorneys are to be commended for their zealous representation of plaintiff. The extensive evidence they submitted in support of plaintiff's claims as well as the thorough and thoughtful briefs they filed demonstrate a superior level of advocacy in this pro bono case.

For the sole purpose of deciding defendants' motion for summary judgment, I find the following facts submitted by the parties to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Steven A. Conway was an inmate at the Jefferson County jail from August 23, 1993 to December 3, 1993. Currently, he is incarcerated at the Kettle Moraine Correctional Institution in Plymouth, Wisconsin. All defendants except defendant Robert Henze were employees of the Jefferson County Department of Human Services: defendant Tom Schleitwiler was the director; defendant Tom Toshner was the supervisor of the intake department; defendant Carol Melody was a case manager; and defendant Mel Haggart was the medical director. Defendant Robert Henze was the jail administrator at the Jefferson County jail.

B. Mendota Mental Health Institute: August 10, 1993 to August 23, 1993

Plaintiff was arrested on August 8, 1993. In 1993 and 1994, plaintiff was an alcoholic and a drug abuser. When plaintiff was arrested, he was intoxicated and asked police officers to kill him. Because plaintiff hit his head while in the squad car, police officers took him to a hospital for treatment and then to a detoxification facility.

On August 10, 1993, plaintiff was admitted to the adult assessment treatment service unit at Mendota Mental Health Institute because of his conduct during detoxification. While at Mendota, plaintiff made comments indicating a desire to die and a plan to kill himself when he returned to jail. Under court order, plaintiff was assessed for emergency detention by two

psychiatrists at Mendota. Both psychiatrists concluded that plaintiff was not mentally ill, did not present a substantial risk of harm to himself and was not a proper subject for involuntary commitment. As a result, a Jefferson County judge ordered that plaintiff be transferred from Mendota to the Jefferson County jail. On August 23, 1993, the day he was to be transferred, Mendota staff found him standing in his cell with socks tied around his neck in the shape of a noose.

C. Jefferson County Jail: August 23, 1993 to December 3, 1993

Plaintiff arrived at the Jefferson County jail on August 23, 1993, and was placed in a holding cell. A jail screening form dated August 23 indicates that plaintiff had psychiatric problems, that he was an alcoholic and that his behavior suggested a risk of suicide or assault.

In 1993 and 1994, Jefferson County Human Services Department social workers provided psychiatric care for inmates of the Jefferson County jail. In addition to social workers, the department employed at least one psychiatrist to provide jail inmates treatment, including medication. The department's intake workers were responsible for conducting emergency detention assessments under Wis. Stat. § 51.15. The decision whether to initiate commitment proceedings for an inmate was made by an intake worker, acting under the supervision of the intake supervisor and with opportunities for consultation with the medical director, supervisor

or jail staff. Intake workers were not psychiatrists and the intake department did not employ a psychiatrist. Intake workers did not *diagnose* inmates for mental illness but they did *assess* inmates for mental illness. In determining whether plaintiff required an emergency detention, the two central factors were whether he was mentally ill and whether he presented a substantial risk of harm to himself or others.

On August 23, 1993, a jail deputy contacted intake worker Annette Pecora at the Department of Human Services to ask that the department conduct an assessment of plaintiff for emergency detention as soon as possible. Plaintiff was placed on suicide watch. Pecora noted in a contact record that she reviewed the situation with defendant Schleitwiler, the department director. (Neither defendant Schleitwiler nor defendant Toshner, the intake supervisor, met with plaintiff at any point.) The same day, intake worker Cheryl Fuchs met with plaintiff and assessed his mental condition to determine whether he met the criteria for emergency detention. Fuchs's contact record from that meeting indicates that plaintiff asked to see a counselor on a weekly basis. During their meeting, plaintiff signed an agreement promising not to "make any more suicidal gestures" and stating that he could "be trusted not to hurt [him]self." Fuchs concluded that plaintiff did not meet the statutory criteria for an emergency detention. After meeting with Fuchs, plaintiff was removed from suicide watch.

On August 24, 1993, defendant Henze told jail staff to watch plaintiff because he was

threatening to kill himself. That same day, a deputy notified the department that plaintiff was pacing in his cell and saying that he heard voices that were telling him to kill himself. In response, department psychiatrist Dr. Webb and intake worker John Vieth met with plaintiff at the jail to determine whether he met the statutory criteria for emergency detention. Webb and Vieth concluded that plaintiff did not meet the criteria. Webb prescribed anti-psychotic medication for plaintiff. After the meeting, plaintiff made cuts in his arm with an eggshell and, as a result, was taken to the emergency room and placed on suicide watch. Vieth's notes in a contact record dated August 24 indicate that he spoke to defendant Schleitwiler about plaintiff and that he was concerned that plaintiff posed a medium to high risk to himself.

On August 26, 1993, jail staff called the department because plaintiff reported that he had taken several pills that he had stockpiled. A jail sergeant told intake worker Vieth that he had spoken with Dr. Webb, who had advised him that the medication might sedate plaintiff but it would not hurt him and that plaintiff did not need to be assessed.

On August 30, 1993, plaintiff cut his wrist with a piece of concrete from the wall. That day, defendant Carol Melody visited plaintiff to provide counseling. Defendant Melody is a social worker with the department who has special training in drug and alcohol dependency. She was assigned to be plaintiff's case manager because of his drug and alcohol problems. During the meeting, plaintiff told defendant Melody that he believed his life was over and that

he heard voices telling him to kill himself. Because defendant Melody recommended to jail staff that they monitor plaintiff closely, he was placed on suicide watch until September 2, 1993.

On September 3, 1993, plaintiff took at least eight doses of his medication that he had stockpiled. On September 5, 1993, jail staff contacted the department to report that plaintiff said he was hearing voices. Intake worker Fuchs met with plaintiff to assess his mental condition and concluded that he did not meet the criteria for emergency detention. On September 10, 1993, plaintiff was moved from one holding cell to another to enable jail staff to observe him. The same day, plaintiff cut his wrist with a staple. After defendant Henze contacted the department to request an assessment, intake worker Vieth met with plaintiff to assess his mental condition. Plaintiff told Vieth that he did not want to go to Mendota and promised to tell jailers if he needed to speak to someone from the department before he hurt himself. Vieth's contact record from that day indicates that plaintiff told Vieth that cutting himself made the voices stop temporarily. Vieth concluded that plaintiff did not meet the criteria for emergency detention.

On September 11, 1993, department intake worker Dave Burke called the jail to check on plaintiff and was told he was okay. On September 12, 1993, Burke met with plaintiff, who told Burke that he did not have any current suicidal ideation. Burke concluded that plaintiff did not meet the criteria for emergency detention. That same day, defendant Melody (a social

worker) prepared a "client registration record assessment/plan/prescription" form for plaintiff. In the plan, defendant Melody noted (1) plaintiff's symptoms, including his complaints of hearing voices and his suicide threats; (2) her diagnosis of plaintiff as suffering from a psychotic disorder and borderline personality disorder; (3) the goal of service as "protection against self abuse"; and (4) the objectives of treatment, which included a psychiatric assessment, medication monitoring, counseling and crisis intervention. Defendant Melody did not include dates by which the objectives would be met. Defendant Haggart (the department's medical director) reviewed and approved defendant Melody's plan.

On September 17, 1993, jail staff contacted the department because plaintiff had asked to speak with someone from the department. That afternoon, department intake worker Gary Sterling met with plaintiff and helped him formulate a personal schedule to occupy his time in an effort to reduce the voices plaintiff heard.

On September 21, 1993, jail staff contacted the department because plaintiff had stated that he planned to hurt himself and wanted to talk to someone from the department. That same day, department intake worker Dominic Wondolkowski met with plaintiff. Wondolkowski's contact record from that meeting indicates that plaintiff told Wondolkowski that he had been hearing voices all night telling him to kill himself and that the jail food was poisoned. Wondolkowski's record also indicates that Wondolkowski discussed plaintiff's

condition with defendant Toshner (supervisor of the intake department) and that jailer Bonnie Reul had told Wondolkowski that a noose had been found in plaintiff's cell the previous night. Wondolkowski concluded that plaintiff did not suffer from a major mental illness because he did not see any substantial change in plaintiff's mood or thought since he had been found not mentally ill at Mendota by two psychiatrists. Because plaintiff had told Wondolkowski that he could harm himself by placing his head in the toilet, the water in plaintiff's cell was turned off temporarily and his toilet was drained. Wondolkowski recommended to the jail sergeant that jail staff monitor plaintiff frequently and put him in the restraining chair if necessary. Plaintiff was placed on suicide watch from September 21 until September 28, 1993 and was placed in a restraining chair designed to prevent self-harm.

On September 22, 1993, defendants Haggart and Melody met with plaintiff. Defendant Haggart revised plaintiff's medications. Defendant Haggart's notes from that meeting indicate that he believed plaintiff suffered from substance abuse, acute decompensation, mixed personality disorder and passive aggressive disorder. On September 23, 1993, defendant Melody met with plaintiff to provide counseling. Defendant Melody met with plaintiff again to provide counseling on September 28, 1993. At that meeting, plaintiff agreed not to harm himself and promised to tell jail staff if he felt he was going to harm himself.

On October 1, 1993, plaintiff was transferred from general population to a holding cell

because he said he was going to hurt himself if he remained in general population. Jail staff contacted the department because plaintiff had scraped his arm with a piece of plaster from his cell wall and had been found with his tee shirt tied around his neck. Jail staff took plaintiff's clothing away from him. Intake worker Burke met with plaintiff to assess his mental condition and concluded that he did not meet the criteria for emergency detention. Burke told plaintiff that he would be on call during the weekend if plaintiff wanted to talk again. Burke's contact record dated October 1, 1993 indicates that plaintiff said that he was hearing voices more frequently than normal and that he requested admission to an inpatient psychiatric unit. Plaintiff was placed on suicide watch from October 1 until October 10, 1993. Plaintiff was allowed out of his cell during the first few weeks of October to shower, shave, brush his teeth, exercise, walk around the pod area (the main inmate housing area), make a phone call, meet with someone for an alcohol assessment and watch television in the general population area.

On October 22, 1993, defendant Melody noted in a client review form that plaintiff had stabilized and was no longer secluded and that there was no change in plaintiff's diagnoses. Defendants Melody and Haggart used the client review form to determine whether to make changes to plaintiff's treatment plan.

A department contact record dated November 19, 1993 indicates that a deputy called the department on November 18 because plaintiff wanted to speak with someone and that the

call was not returned. On November 19, jail staff contacted the department because plaintiff had scraped himself with a pencil point and was placed on suicide watch. Intake worker Wondolkowski met with plaintiff to assess his mental condition. Plaintiff told Wondolkowski that he was tired of fighting the voices that told him to kill himself and that he was upset that he had been in a holding cell for the previous three months. Plaintiff also told Wondolkowski that he wanted to be hospitalized so that someone could review his medications, evaluate any physical problems he had and talk if necessary. Wondolkowski's contact record dated November 19, 1993 indicates that he called defendant Schleitwiler (department director) and they decided that plaintiff would not be detained as an emergency. When Wondolkowski returned to the department later that day, intake worker Nancy Dillon told him that jail staff had called because plaintiff had cut himself and needed to be put in the restraining chair. After talking to defendant Toshner (intake supervisor) about plaintiff, Wondolkowski noted in his contact record that the department's position was still that plaintiff did not qualify for emergency detention. Wondolkowski's contact record indicates that he advised defendant Schleitwiler of plaintiff's situation that day. Wondolkowski contacted defendant Haggart, who increased plaintiff's Prozac dosage.

Plaintiff was taken off suicide watch on November 20. On November 21, 1993, defendant Henze called the department to talk to defendant Toshner or defendant Schleitwiler

about plaintiff. Burke's contact record dated November 21 indicates that Burke returned the call to defendant Henze. Burke's record also indicates that defendant Henze expressed concern that the department was not doing all it could for plaintiff. Specifically, Burke's record indicates that defendant Henze complained that plaintiff's case manager had not visited for three and a half weeks, that the intake staff was slow to respond when jail staff requested an emergency detention assessment and that plaintiff had become incontinent since his medication was increased on November 19.

On November 21, 1993, jail staff contacted the department because plaintiff was banging his head on the cement block and had stuck his hand in the door of his cell as it was closing. Plaintiff was placed back on suicide watch that same day. Intake worker Burke met with plaintiff and concluded that he did not satisfy the criteria for emergency detention. Burke offered to visit plaintiff again that day. Because plaintiff had hurt his hand, a jail deputy gave him an ice pack, which he tore open and consumed. As instructed by the Fort Atkinson Memorial Hospital, jail staff forced plaintiff to drink milk to induce vomiting. Plaintiff was then strapped in the restraining chair. Because plaintiff urinated on himself while in the chair, he was allowed to shower and then was put back in the chair. When Burke returned, plaintiff declined to meet with him.

A jail log dated November 22 indicates that defendant Henze met with defendants

Haggart and Melody about plaintiff. That same day, plaintiff's suicide watch was terminated. Defendants Haggart and Melody met with plaintiff to assess his mental condition. At the meeting, plaintiff looked unkempt and had body odor. Plaintiff told defendant Melody that if he was not hospitalized, he would kill himself. After defendant Haggart revised plaintiff's medications, tried to explain to plaintiff how the department would try to help him and told him that hospitalization was not appropriate, plaintiff threw a chair against the window and had to be restrained. After plaintiff calmed down, defendant Haggart explained his treatment plan. Defendant Haggart's progress notes from November 22 indicate that plaintiff had taken a turn for the worse over the weekend and that he had been banging his head, refusing to eat and taking his medication irregularly. That same day, defendant Melody discussed her concerns about plaintiff's self-abusive behavior with defendant Schleitwiler. In a progress note dated November 22, defendant Melody noted that defendant Schleitwiler believed the department should schedule plaintiff for an emergency detention. Defendant Melody's notes also indicate that plaintiff asked to be hospitalized, that he was angry that she had not seen him for three weeks and that he said he would kill himself if the department did not hospitalize him.

On November 23, 1993, defendant Melody spoke to someone at the jail and learned that plaintiff had eaten, taken his medication and appeared to be stable. Later that day,

defendant Melody met with plaintiff to provide counseling. Defendant Melody talked to plaintiff about what to do with his time and suggested that plaintiff monitor himself and "let someone know before just blowing." Plaintiff told defendant Melody that he felt less agitated but that he still heard voices.

On November 29, 1993, defendant Melody met with plaintiff and thought his concern about his criminal charges indicated an orientation toward the future. Later that day, defendant Henze brought plaintiff to the multipurpose room to exercise. While in the multipurpose room, plaintiff ingested some of the contents of a battery and was taken to Fort Atkinson Memorial Hospital to get his stomach pumped.

On December 3, 1993, defendants Haggart and Melody met with plaintiff. Defendant Haggart increased plaintiff's dosage of Loxitane. Defendant Melody's progress notes dated December 3, 1993 indicate that plaintiff expressed problems with sleep and suicide ideation.

D. Buffalo County Jail: December 3, 1993 to January 8, 1993

On December 3, 1993, plaintiff was transferred to the Buffalo County jail for a probation revocation hearing. Jefferson County jail employees warned the Buffalo County sheriff that plaintiff needed to be monitored closely and they provided plaintiff's anti-depressant medications. On the first night at the Buffalo County jail while in a general

population unit, plaintiff tried to choke himself on unchewed meat. In response, the jail staff placed plaintiff in an isolation cell for three days as a suicide precaution. When he returned to the general population unit, he cut his neck, elbow and wrists with a razor and was assigned again to an isolation cell.

E. Jefferson County Jail: January 8, 1994 to February 15, 1994

On January 8, 1994, plaintiff returned to the Jefferson County jail. A jail deputy completed a screening form in which he noted that plaintiff reported that he was suicidal and had attempted suicide on January 6. The jail central control logs from January 8-10 indicate that plaintiff had refused to eat and that he had informed a deputy that he was trying to starve himself. A jail deputy contacted Fort Atkinson Memorial Hospital and the hospital advised that plaintiff could live for days without food as long as he was drinking. Plaintiff was placed on suicide watch on January 9, 1994. Jail staff contacted the department because plaintiff had returned to the jail suicidal. Intake worker Burke met with plaintiff to assess his mental condition and concluded that he did not meet the criteria for an emergency detention. In a contact record dated January 9, Burke noted that plaintiff "is low risk to hurt himself, but continues to be a high risk of causing self inflicted injury to himself." On January 9, defendant Henze called the jail and learned that plaintiff was picking at his stitches. Defendant Henze directed a jail deputy to put plaintiff in the restraining chair.

On January 10, 1994, defendant Melody tried to meet with plaintiff but he would not get out of bed for the visit. That same day, plaintiff was taken off suicide watch. Defendant Melody prepared a client review form dated January 10, which the department used to determine whether plaintiff's treatment plan needed any changes. In the review, defendant

Melody noted that plaintiff "continues self-abuse and threatens suicide." Although the goal of protecting plaintiff from self-abuse had not been accomplished, plaintiff's treatment was not changed. In considering plaintiff's placement and treatment, it was not important to defendant Melody whether plaintiff was allowed to participate in activities, exercise, talk to other people or leave his cell.

On January 13, 1994, defendant Haggart and department social workers Dennis Ryan and Karen Marino met with plaintiff to review his treatment plan and to provide counseling. Ryan thought plaintiff was depressed and psychotic; he did not think plaintiff was a danger to himself or others. Beginning January 20, 1994, the department implemented a policy of sending social workers Marino and Ryan to the jail for two hours twice a week so that department workers would be available at the jail on a regular basis. As of that time, defendant Melody was no longer the social worker responsible for providing plaintiff with mental health services. On January 20, Ryan and Marino met with plaintiff to provide counseling; they concluded that plaintiff did not need to be assessed for emergency detention.

On January 22, 1994, plaintiff cut his arms with a razor blade. Jail staff contacted the department to inform it of the incident. Burke met with plaintiff to assess his mental condition and concluded that he did not meet the criteria for an emergency detention. On January 27, 1994, social worker Marino met with plaintiff to provide counseling and concluded that he did

not meet the criteria for an emergency detention. On January 28, 1994, plaintiff drank a bottle of rubbing alcohol and was taken to the hospital for treatment. Jail staff contacted Marino to tell her about the incident. Marino met with plaintiff to provide counseling and to assess his mental condition. She concluded that plaintiff did not need to be assessed for an emergency detention.

On February 3, 1994, because plaintiff was pacing in his cell, he was allowed to walk around the main inmate housing area, exercise and attend Bible study. Defendant Haggart met with plaintiff that day. On February 8, 1994, plaintiff refused to have his blood drawn. The next day, defendant Haggart discontinued the prescription for Tegretol because plaintiff had refused to submit to the necessary blood tests.

On February 15, 1994, Ryan and Marino met with plaintiff to provide counseling and assess his mental condition. They concluded that plaintiff did not need to be assessed for an emergency detention.

F. Mendota Mental Health Institute: February 15, 1994 to April 16, 1994

On February 15, 1994, plaintiff was transferred to the secure assessment and treatment unit at Mendota to be evaluated for his competency to stand trial. He was found not competent to stand trial. Mendota staff found plaintiff standing in his cell with shoelaces tied

around his neck. Plaintiff was not allowed to possess hygiene items such as a washrag, toothbrush or toothpaste and was often forced to wear a heavy material gown to prevent self-harm.

Plaintiff met with Dr. Gary Maier, who put plaintiff on suicide watch because he thought plaintiff was a danger to himself. After two months of treatment, the doctors at Mendota concluded that plaintiff did not require the services of a psychiatric hospital and that it was appropriate to transfer him back to the Jefferson County jail. In a letter dated April 7, 1994 from Dr. Ronald Sinberg, a psychologist at Mendota, to Jefferson County Judge Arnold Schuman, Dr. Sinberg indicated that plaintiff had improved and was now competent to stand trial.

G. Jefferson County Jail: April 16, 1994 to April 27, 1994

On April 16, 1994, plaintiff was returned to the Jefferson County jail. On April 27, 1994, he was transferred to the Wisconsin state prison system. Plaintiff sent defendant Melody a letter after his transfer to a state prison in which he thanked her for her kindness while he was incarcerated at the Jefferson County jail.

H. Conditions of Confinement

1. Holding cell

During the time plaintiff was confined at the Jefferson County jail, his symptoms included hallucinations, hearing voices, suicidal ideation and drug and alcohol withdrawal. He was not in a constant state of agitation; there were periods of quiescence. Because of plaintiff's symptoms and repeated acts of self-harm, he was assigned to a holding cell for most of the time he spent at the Jefferson County jail. The holding cells and the general population cells are approximately the same size. Plaintiff's holding cell had a wash basin with hot and cold water. The water in plaintiff's cell was shut off once because he was threatening to drown himself in the toilet, once for maintenance and two or three other times.

Out of the approximately 150 days that plaintiff spent in a holding cell, he was let out approximately 32 times to walk around the pod, use an exercise bike, watch television, attend four meetings of Alcoholics Anonymous and attend Bible study. He was also allowed to leave to shower, meet with department employees, drink from a nearby water fountain and engage in other activities. According to jail and department records, plaintiff was visited by department personnel, including psychiatrists, his case manager, social workers and intake workers, on at least 31 occasions during his five-month incarceration. Plaintiff's visits with intake workers were usually no longer than ten minutes.

While at the jail, plaintiff was placed on suicide watch for 30 days. An inmate is put on

suicide watch if he has threatened to harm himself or has tried to do so. While plaintiff was on suicide watch, deputies usually monitored him every fifteen to thirty minutes; however, there were occasions when plaintiff was not monitored for up to four hours.

2. Showers

Unlike the general population units, the holding cells do not have shower facilities. During the first month of plaintiff's incarceration at the Jefferson County jail, he asked for a shower every day and was often told that the staff was too busy.

When an inmate being held in a holding cell is given a shower, a record of the shower is made in the central control or pod log. Jail logs indicate that plaintiff was taken out of his holding cell to shower on September 2, 5, 13, 15 and 22. Plaintiff was in the general population unit on September 17 and September 28 through October 1 and inmates in general population are allowed to shower whenever they want to shower. Plaintiff denies that he received a shower during the first month he was at the jail.

After the initial four to six week period of plaintiff's incarceration, he was allowed to shower approximately once a week and occasionally more than once a week. When plaintiff was experiencing incontinence in November 1993, he received three showers over three days.

3. Hygiene products

When plaintiff was in a holding cell, he did not have a toothbrush, toothpaste, soap, toilet paper or shampoo because he could harm himself with these objects. He was allowed supervised access to hygiene products only when he was taken out of the holding cell. When plaintiff was in a general population unit, he had access to all hygiene products.

4. Clothing

About half the time plaintiff was at the Jefferson County jail, he was allowed to wear underwear only.

I. Privacy

Plaintiff was assigned to each of the five holding cells at various times while at the Jefferson County jail. The holding cells are along a corridor between the pod control area and the central control area. The corridor has a wall with a concrete lower portion and a glass upper portion. Escorted and unescorted inmates of both sexes and jail staff travel through the corridor in front of the holding cells. On at least two occasions, female inmates walking through the corridor saw plaintiff using the toilet. On one occasion, female inmates laughed at plaintiff when they saw him sitting on the toilet naked.

In November 1993, jail staff closed the solid steel door to plaintiff's cell. Prior to this occasion, plaintiff was unaware that the holding cells had solid doors in addition to the barred doors. Plaintiff asked that jail staff close the solid door whenever he had to use the toilet and someone was walking by his cell. Plaintiff was told that jailers would not shut the door under any circumstances. Defendant Henze thought that it was jail practice for jail officials to close the solid door of the holding cell if there was a concern that people other than jail officials could observe the inmate using the toilet.

On the other side of the corridor wall is another corridor used by inmates traveling between the pod area and the visitor booths. The inmates can see into the holding cells through the glass. The doors to the visitor booths are parallel to the holding cells. Each door has a window that is coated with one-way reflective material. Each visitation booth is separated into two areas by a glass panel; visitors sit on one side of the glass panel and inmates sit on the other. The door inmates use to enter the visitation booth is opened by an officer in the central control booth, who can see only two or three of the holding cells. Jailers did not look into the holding cells before unlocking the door to the visitor booth on the inmate side. The toilets in the holding cells are visible from the visitor side of the visitor booth. Plaintiff remembers three times he was visible to visitors while he was using the toilet in a holding cell. When plaintiff realized that visitors could see him while he was using the toilet, he told jail staff.

Defendant Henze wanted to place a video camera outside the door to the visitor's booth across from plaintiff's holding cell in order to videotape him as he freed himself from the restraint chair. Defendant Henze denies that he was aware that the holding cells were visible from the visitors' booths until after plaintiff filed this suit.

J. Defendant Melody

As a case manager, defendant Melody provided counseling to department patients. She met with plaintiff at least eight times. Defendant Melody did not conduct an emergency detention assessment of plaintiff and she was not authorized to initiate an emergency detention. Defendant Melody thought that plaintiff was mentally ill and at some point, she thought that plaintiff posed a substantial probability of causing physical harm to himself.

Defendant Melody was aware that jail staff observed plaintiff frequently, put him in a holding cell and a restraining chair when necessary and removed items he could use to harm himself. Defendant Melody was also aware that he was given medications to quiet the voices he heard.

K. Defendant Haggart

Defendant Haggart met with plaintiff on at least five occasions. Defendant Haggart's treatment of plaintiff included prescribing medication and psychiatric assessment. He did not

provide counseling. Defendant Haggart prescribed the following medications for plaintiff: Haldol and Loxitane (both anti-psychotic drugs); Tegretol (a drug used to treat unstable moods, depression and aggression); and Prozac (an anti-depressant). Defendant Haggart concluded that long-term psychotherapy was not appropriate for plaintiff because of the limited length of his stay at the jail.

Defendant Haggart knew that plaintiff engaged in self-abusive behavior, experienced auditory hallucinations and wanted to go to Mendota. He also knew that jail staff strapped plaintiff in the restraint chair and removed his clothing when necessary.

L. Plaintiff's Expert

It is the opinion of Dr. Kenneth Smail, plaintiff's expert witness, that jail and department employees "were not callous to [plaintiff] . . . the response was inadequate but not callous. They weren't indifferent to him." It is his opinion that the treatment plan was impoverished, that the strategies defendants offered plaintiff for stress reduction were ineffective and that the contacts between the intake workers and plaintiff were no more than diversions and were unlikely to have any sustained beneficial effect.

OPINION

A. Standard of Review

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex v. Catrett, 477 U.S. 317, 324 (1986). All evidence and inferences must be viewed in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). However, the non-moving party must set forth specific facts sufficient to raise a genuine issue for trial. See Celotex, 477 U.S. at 324.

B. Fourteenth Amendment: Inadequate Psychiatric Treatment

Because plaintiff was a pre-trial detainee at the Jefferson County jail, his claim of inadequate medical treatment is controlled by the Fourteenth Amendment, rather than the Eighth Amendment, which is applicable only to inmates serving sentences pursuant to a criminal conviction. See Bell v. Wolfish, 441 U.S. 520, 536 (1979); Estate of Cole v. Fromm, 94 F.3d 254, 258-59 (7th Cir. 1996). A pre-trial detainee's constitutional rights are distinct from those of a prisoner because the state cannot punish a pre-trial detainee. See Bell, 441 U.S. at 535 & n.16. The due process rights of a pre-trial detainee are "at least as great as the Eighth Amendment protections available to a convicted prisoner." City of Revere v. Massachusetts

General Hospital, 463 U.S. 239, 244 (1983). In general, a pre-trial detainee's claim is analyzed in the same way as a claim under the Eighth Amendment to determine whether the officials showed deliberate indifference to serious medical needs. See Higgins v. Correctional Medical Services of Illinois, Inc., 178 F.3d 508, 511 (7th Cir. 1999) ("Under the Fourteenth Amendment, a claim for denial of medical services is analyzed under the Eighth Amendment standards."); Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir. 1997) (same).

In Farmer v. Brennan, 511 U.S. 825, 837 (1994), the Supreme Court determined that a prison official is liable under the deliberate indifference standard if "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." It is not enough to show that defendant's medical treatment was negligent or grossly inadequate. See id. at 835. "A detainee establishes a § 1983 claim by demonstrating that the defendants were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger." Payne v. Churchich, 161 F.3d 1030, 1041 (7th Cir. 1998).

The Seventh Circuit has held that the "professional judgment" standard articulated in Youngberg v. Romeo, 457 U.S. 307 (1982), applies to claims of inadequate medical treatment brought by pre-trial detainees if the decision was "made by professionals such as physicians,

psychiatrists, and nurses within their area of expertise." Collignon v. Milwaukee County, 163 F.3d 982, 987-88 (7th Cir. 1998); Chavez v. Cady, 207 F.3d 901, 905(7th Cir. 2000). The professional judgment standard requires "essentially the same analysis" as the deliberate indifference standard. Collignon, 163 F.3d at 988. "First, the plaintiff's medical needs must have been objectively serious. . . Second, in order for the plaintiff to show that the state actor's decision was 'such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment,' Youngberg, 457 U.S. at 323, the plaintiff must show: (1) that the professional knew of the serious medical need, and (2) disregarded that need." The Seventh Circuit explained that "[a] plaintiff can show that the professional disregarded the need only if the professional's subjective response was so inadequate that it demonstrated an absence of professional judgment, that is, that no minimally competent professional would have so responded under those circumstances. Id. at 989 (citing Steele v. Choi, 82 F.3d 175, 179 (7th Cir. 1996)).

Plaintiff's first contention is that defendants Melody, Haggart, Schleitwiler and Toshner violated his rights protected by the Fourteenth Amendment by denying him adequate medical care while he was an inmate at the Jefferson County jail. (Although plaintiff argues that defendant Henze violated his Fourteenth Amendment rights by denying him medical care, I

denied plaintiff's request to amend his complaint to add this claim in an order entered February 3, 2000.) The parties agree that defendants Melody and Haggart are subject to the professional judgment standard under Collignon and that defendants Schleitwiler and Toshner are subject to the deliberate indifference standard under Farmer. Defendants do not dispute that plaintiff had an objectively serious psychiatric need as a result of his mental illness and alcoholism.

The Court of Appeals for the Seventh Circuit has emphasized that the court "must examine the totality of an inmate's medical care when considering whether that care evidences" a violation of the Eighth or Fourteenth Amendments. Gutierrez v. Peters, 111 F.3d 1364, 1375 (7th Cir. 1997). This is especially true in this case because the facts demonstrate that plaintiff received extensive psychiatric attention from various staff from the Jefferson County jail as well as the Jefferson County Human Services Department throughout his confinement at the jail.

The department provided plaintiff with psychiatric care in three central ways. First, intake workers met with plaintiff to evaluate whether he needed to be removed from the jail and committed to a psychiatric facility. On at least eleven occasions, four different intake workers determined that plaintiff did not meet the criteria for an emergency detention because either he was not mentally ill or he did not pose a substantial risk of harm to himself or others.

Second, two doctors from the human services department met with plaintiff at least six times in order to prescribe and adjust medication for him, including an anti-psychotic medication and an anti-depressant medication. Third, the department provided plaintiff with psychiatric treatment by assigning him a case manager, defendant Melody for the first four months of plaintiff's stay at the jail and Ryan and Marino for the last month. Defendant Melody met with plaintiff eight times to provide counseling and Ryan and Marino met with him five times.

Although the jail had arranged for the department to provide psychiatric care for its inmates, jail staff played an integral role in protecting plaintiff from harming himself. For instance, jail staff monitored plaintiff in a holding cell, strapped him in a restraining chair when necessary, placed him on suicide watch, removed any items he could use to hurt himself and took him to the emergency room twice after he tried to hurt himself.

1. Defendant Melody

Plaintiff argues that defendant Melody provided constitutionally inadequate care because of her lack of visits and counseling sessions with plaintiff. As evidenced by the treatment plan defendant Melody prepared on September 12, 1993, her goal in treating plaintiff was protection from "self abuse." In an effort to accomplish this goal, defendant Melody met with plaintiff to provide counseling on eight occasions and worked with defendant

Haggart to assure plaintiff was medicated. Although defendant Melody was not authorized to initiate an emergency detention herself, she was aware that intake workers performed multiple assessments to determine whether plaintiff needed to be transferred from the jail. She was also aware of the strategies the jail staff used to protect plaintiff from hurting himself. As plaintiff's case manager, defendant Melody decided that the objectives for the department's treatment of plaintiff while he was at the county jail were "a psychiatric assessment, medication monitoring, counseling and crisis intervention," all of which were accomplished to some extent.

Although defendant Melody's failure to provide weekly counseling sessions may have been negligent, especially in light of plaintiff's repeated acts of self-harm, her treatment of plaintiff does not "demonstrate[] an absence of professional judgment." Collignon, 163 F.3d at 989-90 (stating that negligence does not establish Fourteenth Amendment violation). In Collignon, 163 F.3d at 991, the Seventh Circuit held that a county psychiatrist exercised professional judgment in prescribing a nontherapeutic dose of an anti-psychotic drug for a pre-trial detainee who committed suicide. The court noted that "[t]he County had a duty to provide reasonable safety to [the deceased] while he was a pre-trial detainee and to provide for his basic medical needs. In the context of a chronically mentally ill person . . ., that duty is principally one of maintenance rather than cure." Id. Despite plaintiff's self-inflicted injuries

resulting from cutting himself with a razor, staple, concrete and eggshell and ingesting stockpiled pills and the contents of an ice pack, various mental health workers determined repeatedly that he did not need the services of a psychiatric hospital. As part of a mental health team, defendant Melody was entitled to rely on the judgment of department intake workers as well as the doctors at Mendota Mental Health Institute in making her own professional judgment as to what was required to "provide reasonable safety" to plaintiff.

The opinion of plaintiff's expert Dr. Kenneth Smail that jail and department employees "were not callous to [plaintiff.] . . . the response was inadequate but not callous" militates *against* finding a constitutional violation. Dr. Smail's opinion that defendant Melody's treatment plan was impoverished and her strategies for reducing plaintiff's stress were ineffective is insufficient to demonstrate "that no minimally competent professional would have . . . responded" as defendant Melody did. Collignon, 163 F.3d at 989. It is unfortunate that plaintiff endured great suffering while at the Jefferson County jail; however, the Constitution does not provide that pre-trial detainees are entitled to receive whatever medical treatment they desire or the level of treatment that would be of greatest benefit to them. The Constitution requires no more than the level of care that a minimally competent professional would render. In her position as plaintiff's case manager for the time he was in the temporary custody of the jail, defendant Melody provided care that met or exceeded this minimum

standard.

2. Defendant Haggart

Plaintiff argues that defendant Haggart provided constitutionally inadequate care because of defendant Haggart's failure to provide any treatment aside from prescribing and modifying plaintiff's prescription drugs. Plaintiff's argument overlooks the fact that defendant Haggart's primary role as part of the department's mental health team was to prescribe and monitor medication. Defendant Haggart fulfilled his role adequately by performing a psychiatric assessment, consulting with defendant Melody about plaintiff's treatment plan and prescribing anti-psychotic and anti-depressant drugs and adjusting the drugs as necessary. Although plaintiff argues that defendant Haggart failed to adjust plaintiff's medication for three weeks after the medication had begun to cause plaintiff incontinence, the undisputed facts demonstrate that defendant Haggart adjusted plaintiff's medication one day after learning of plaintiff's incontinence and three days after it began.

Defendant Haggart's decision was that medication, rather than psychotherapy, was the appropriate course of treatment for plaintiff because of his limited time at the jail. This qualifies as an appropriate professional judgment. The Seventh Circuit has recognized that mental illness cannot be "cured, only treated in the long term without any guarantee of

success." Collignon, 163 F.3d at 991. As the psychiatrist on plaintiff's mental health care team, defendant Haggart fulfilled his role by prescribing medications that were appropriate to address plaintiff's mental illness.

3. Defendants Schleitwiler and Toshner

Plaintiff argues that defendants Schleitwiler and Toshner denied him adequate psychiatric treatment by refusing to transfer him to Mendota Mental Health Center. Plaintiff does not attempt to hold defendants Schleitwiler and Toshner liable in their supervisory positions; rather, he contends that they knew about his situation at the jail and refused to authorize a transfer. Defendants Schleitwiler and Toshner deny that they had sufficient personal involvement in providing plaintiff with treatment to be held liable under § 1983. Department records indicate that intake workers and defendant Melody consulted with both defendants about plaintiff. Although it is unclear whether such consultations are sufficient to establish the requisite personal involvement for liability under § 1983, for purposes of deciding this motion, I will assume defendants Schleitwiler and Toshner had such personal involvement.

Without any properly proposed facts showing that defendants Schleitwiler and Toshner knew of an excessive risk to plaintiff's health, plaintiff cannot raise a triable issue of fact concerning the denial of a constitutional right. Plaintiff's argument presumes that defendants

Schleitwiler and Toshner read plaintiff's department records and concluded that plaintiff's self-abusive behavior demonstrated an excessive risk to his health. Even if that is true, plaintiff has failed to show why the failure of defendants Schleitwiler and Toshner to transfer plaintiff to Mendota shows their disregard for the excessive risk. Plaintiff's disagreement with the department over its refusal to transfer him to a mental health facility falls short of establishing that defendants Schleitwiler and Toshner "were aware of a substantial risk of serious injury to the detainee but nevertheless failed to take appropriate steps to protect him from a known danger." Payne, 161 F.3d at 1041.

C. Fourteenth Amendment: Conditions of Confinement

The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon jail officials the duty to "provide humane conditions of confinement" for prisoners. Farmer, 511 U.S. at 832. See Collignon, 163 F.3d at 987 (stating protections extended to pre-trial detainees under the due process clause are at least as extensive as the protections against cruel and unusual punishment extended to prisoners by the Eighth Amendment). This duty includes the obligation to "ensure that inmates receive adequate food, clothing, shelter, protection, and medical care." Oliver v. Deen, 77 F.3d 156, 159 (7th Cir. 1996). The conditions of a prisoner's confinement are actionable only if the plaintiff shows that the conduct

of the prison officials satisfies a test that involves both an objective and subjective analysis. See Farmer, 511 U.S. at 834. The objective component focuses on whether the conditions "exceeded contemporary bounds of decency of a mature, civilized society." Lunsford v. Bennett, 17 F.3d 1574, 1579 (7th Cir. 1994) (citing Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992)). Not all restrictive or even harsh prison conditions are actionable under the Eighth Amendment. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Deprivations must be "unquestioned and serious" and contrary to "the minimal civilized measure of life's necessities." Rhodes, 452 U.S. at 347.

The subjective component focuses on intent: "whether the prison officials acted wantonly and with a sufficiently culpable state of mind." Lunsford, 17 F.3d at 1579. In prison conditions cases, the requisite "state of mind is one of 'deliberate indifference' to inmate health or safety." Farmer, 511 U.S. at 834. Deliberate indifference "'implies at a minimum actual knowledge of impending harm easily preventable, so that a conscious, culpable refusal to prevent the harm can be inferred from the defendant's failure to prevent it.'" Dixon v. Godinez, 114 F.3d 640, 645 (7th Cir. 1997) (quoting Duckworth v. Franzen, 780 F.2d 645, 653 (7th Cir. 1985)). The deliberate indifference test is the same under the Eighth and Fourteenth Amendments. See Mathis v. Fairman, 120 F.3d 88, 91 (7th Cir. 1997) (citing Salazar v. City of Chicago, 940 F.2d 233, 240-241 (7th Cir. 1991)).

1. Objective component

a. Holding cell

Plaintiff's confinement in a holding cell for most of the five months he spent at the jail did not "exceed[] contemporary bounds of decency of a mature, civilized society." Lunsford, 17 F.3d at 1579. Plaintiff has adduced no evidence that cell temperatures exceeded safe limits or that the cell conditions otherwise posed a health threat; in fact, the holding cell was the same size as a general population cell and had a wash basin and a toilet. Plaintiff was not confined to a cell at all times; he was allowed out of the cell to shower, walk around, exercise, watch television, attend Alcoholics Anonymous meetings and Bible study and meet with department employees. Undoubtedly, plaintiff's confinement in a holding cell was not pleasant but the conditions of the cell were not constitutionally inadequate.

b. Showers

After the initial month of plaintiff's confinement, he was allowed to shower approximately once a week and was allowed to shower three times in three days during the brief period he was experiencing incontinence. The Seventh Circuit has held that one shower a week for inmates confined in segregation is constitutionally sufficient. See Davenport v. DeRobertis, 844 F.2d 1310, 1316-17 (7th Cir. 1988). The crux of plaintiff's claim regarding the denial of

showers stems from his contention that he did not receive a shower for the entire first month he was at the jail after his arrival on August 23, 1993. Defendant Henze points to jail logs indicating that plaintiff received a shower on September 2, 5, 13, 15 and 22, as well as the fact that plaintiff was placed in a general population unit three weeks after his arrival and that he had free access to showers there. Regardless whether plaintiff received a shower nine days or one month after his arrival at the jail, he was not deprived of the ability to clean himself; his holding cell had a wash basin with hot and cold water. In Davenport, 844 F.2d at 1316, the court indicated that if an inmate has a wash basin in his cell, fewer showers may be acceptable. There is no evidence indicating that plaintiff's cell was unusually dirty or that he was denied showers to a degree that health concerns were implicated. See Lunsford, 17 F.3d at 1580 ("The record contains no evidence indicating that plaintiffs' cells were unusually dirty or unhealthy, or that health hazards existed.") Even if I assume that plaintiff was denied a shower for an entire month and that such denial satisfies the objective standard for a Fourteenth Amendment violation, plaintiff also needs to satisfy the subjective component of the test, as discussed below.

c. Hygiene products

Plaintiff does not allege that he was deprived of hygiene products at all times that he was assigned to a holding cell. To the contrary, plaintiff was allowed supervised access to hygiene

products when he was taken out of his cell. Although the jail was obligated to provide plaintiff "with materials sufficient to meet his basic levels of sanitation and hygiene," plaintiff does not have a right to unlimited or unsupervised access to products such as toothpaste and shampoo. Sanders v. Sheahan, 198 F.3d 626, 628 (7th Cir. 1999).

2. Subjective component

Even if plaintiff was subjected to conditions of confinement that are contrary to "the minimal civilized measure of life's necessities," Rhodes, 452 U.S. at 347, defendant Henze did not act with deliberate indifference. To the contrary, defendant Henze was aware of the high risk of self-inflicted harm plaintiff posed and he took reasonable measures in an attempt to protect him. Plaintiff demonstrated repeatedly that he was capable of creative methods of harming himself. He used anything he could get his hands on to hurt himself, including the plaster and concrete on his cell walls. As a result of the destructive behavior plaintiff exhibited, defendant Henze acted out of concern for plaintiff's safety. Plaintiff was assigned to a holding cell so that he could be monitored more carefully by jail staff. Upon the recommendation of department staff or the observation that plaintiff's behavior posed a risk, jail staff took the next step of placing plaintiff in a restraining chair or on suicide watch. In recognition of the fact that "almost any object may be used to harm onself," defendant Henze allowed plaintiff only

supervised access to hygiene products and took away his clothes. Meyers v. County of Lake, Indiana, 30 F.3d 847, 850 (7th Cir. 1994); Anderson v. County of Kern, 45 F.3d 1310, 1314 (9th Cir. 1995) (recognizing that suicidal inmates might use sinks, standard toilets and beds to harm themselves and approving use of padded cell). There is no indication that defendant Henze deprived plaintiff of a shower as a means of punishment or that he was aware of a health danger posed by the alleged denial of access to showers. Plaintiff required close monitoring at all times. Defendant Henze had to balance the benefit of allowing plaintiff to shower against the danger the situation created. Defendant Henze was aware of plaintiff's mental illness and acted within constitutional standards in modifying plaintiff's conditions of confinement in order to protect plaintiff.

D. Fourth Amendment: Right to Privacy

Plaintiff contends that defendant Henze is liable under § 1983 because defendant Henze violated his plaintiff's Fourth Amendment rights by allowing visitors and female inmates to see him while he used the toilet in his holding cell. Section 1983 creates a federal cause of action for "the deprivation under color of [state] law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States." Gossmeyer v. McDonald, 128 F.3d 481, 489 (7th Cir.1997) (quoting Livadas v. Bradshaw, 512 U.S. 107,

132 (1994)). To prevail on a § 1983 claim, plaintiff must prove that (1) defendant Henze deprived him of a right secured by the Constitution and laws of the United States and (2) defendant Henze acted under color of law. See Adickes v. Kress & Co., 398 U.S. 144, 150 (1970).

To establish individual liability under § 1983, a plaintiff must allege that the individual defendant was involved personally in the alleged constitutional deprivation. Under § 1983, an individual defendant cannot be held liable under a theory of respondeat superior. See Hearne v. Board of Education of City of Chicago, 185 F.3d 770, 776 (7th Cir. 1999). "'Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation.'" Vance v. Peters, 97 F.3d 987, 991 (7th Cir. 1996) (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir. 1994)); see also Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983) ("A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary."). It is not necessary that the defendant participated directly in the deprivation. The official is sufficiently involved "if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." Smith v. Rowe, 76l F.2d 360, 369 (7th Cir. l985). See also Kelly v. Municipal

Courts of Marion County, Indiana, 97 F.3d 902, 908 (7th Cir. 1996); Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995).

As jail administrator, defendant Henze is presumed to be familiar with the basic physical layout of the jail, which allowed for unescorted female inmates to use the corridor in front of plaintiff's holding cell. However, as defendant Henze points out, he also knew that each holding cell had a solid door in addition to a barred door. In fact, defendant Henze has sworn that as far as he knew, jail officials closed the solid door of the holding cell when there was concern that non-jail officials could observe an inmate using the toilet. In response, plaintiff has adduced no evidence that defendant Henze knew that non-jail officials had seen plaintiff using the toilet in his cell on occasion, that plaintiff had asked jail staff to close the solid door and jail staff had denied his request or that jail staff consulted with defendant Henze after plaintiff informed them that visitors could see plaintiff using the toilet under certain circumstances. Plaintiff may have a viable Fourth Amendment claim against the jail officials who refused to close the solid door to his cell or who made the decision that the solid door should not be closed or who ignored the information that visitors could see him from the visitors' booths. However, without proof that the alleged constitutional deprivation occurred at defendant Henze's "direction or with [his] knowledge and consent," defendant Henze cannot be held responsible under § 1983. Smith, 76l F.2d at 369; see also Gilchrist v. Kane County Correctional Center, 48 F. Supp.2d

809, 813 (N.D. Ill. 1999) (holding that prison warden could not be held liable under § 1983 absent showing that he knew, directed, facilitated, approved, condoned or turned a blind eye to unconstitutional conduct).

E. Americans with Disabilities Act

"In order to show a violation of [Title II of] the ADA, the plaintiff must prove that he is a 'qualified individual with a disability,' that he was denied 'the benefits of the services, programs, or activities of a public entity' or otherwise subjected to discrimination by such an entity, and that the denial or discrimination was 'by reason of' his disability." Love v. Westville Correctional Center, 103 F.3d 558 (7th Cir. 1996) (citing 42 U.S.C. § 12132). Under the ADA, two distinct categories of disability discrimination claims exist: disparate treatment and failure to accommodate. See Washington v. Indiana High School Athletic Association, Inc., 181 F.3d 840 (7th Cir. 1999) (citing McPherson v. Michigan High School Athletic Association, 119 F.3d 453, 459-60 (6th Cir. 1997)). Plaintiff relies on both theories in arguing that defendant Henze violated his rights under the act by denying him regular access to showers and hygiene products.

Section 12131 defines a "qualified individual with a disability" as "an individual with a disability" who "meets the essential eligibility requirements" for participating in the program,

with or without reasonable accommodations. A person is disabled within the meaning of the act if he suffers from a physical or mental impairment that substantially limits one or more major life activities. See 42 U.S.C. § 12102(2). A major life activity is "substantially limited" when the person is unable to perform it or is significantly restricted in the manner, condition, or duration in which she can perform it in comparison to the general population. 29 C.F.R. § 1630.2(j) (1998). Substantially limited means that the impairment in question must be significant. See Byrne v. Board of Education, 979 F.2d 560, 563 (7th Cir. 1992). Major life activities include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 29 C.F.R. § 1630.2(I) (1998).

Plaintiff contends that he is entitled to the protection of the act because he is a "qualified individual with a disability." Specifically, plaintiff argues he is disabled because he suffered from an emotional illness, which is included in the definition of "mental impairment," and that his impairment substantially limited his ability to take care of himself, which is included in the definition of "major life activities." See 28 C.F.R. §35.104. Plaintiff's position that he was unable to care for himself because of his propensity to harm himself undercuts his argument that he was discriminated against on the basis of his disability. If plaintiff is a "qualified individual with a disability," defendant Henze's contention that it was necessary to provide him limited, supervised access to showers and hygiene products is justified by plaintiff's

own admission that he could not care for himself. Plaintiff argues that he should have been given daily access to showers and hygiene products at the jail as he was at Mendota. Although it would be ideal if plaintiff had received that level of individualized attention during his stay at the jail, the ADA mandates *reasonable* accommodations. Providing limited access to showers and hygiene products under the supervision of jail staff was a reasonable accommodation to plaintiff's mental illness. Plaintiff has presented no evidence indicating that defendant Henze intentionally discriminated against him because of his disability rather than in an effort to fulfill his obligation to prevent plaintiff from self-harm as a result of his disability. No reasonable trier of fact could conclude that defendant Henze violated plaintiff's rights protected by the ADA.

F. Wisconsin Mental Health Act

Because plaintiff has not raised a viable federal law claim, I decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over plaintiff's state claims under the Wisconsin Mental Health Act. See 28 U.S.C. § 1367(c)(3). Section 1367(a) provides that "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case . . ." The Seventh Circuit has recognized that "a district court has the discretion to retain or

to refuse jurisdiction over state law claims." Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999). Plaintiff's state law claims will be dismissed without prejudice because they are "'not obviously totally lacking in merit.'" Pleva v. Norquist, 195 F.3d 905, 918 (7th Cir. 1999). However, plaintiff should be aware that if the state court determines that plaintiff has not provided defendants with "written notice of the circumstances of the claim" pursuant to Wis. Stat. § 893.80, it will have to dismiss his claims.

ORDER

IT IS ORDERED that

1. The motion of defendants Robert Henze, Tom Schleitwiler, Tom Toshner, Carol Melody and Mel Haggart for summary judgment on plaintiff Steven Conway's §

1983 claims is GRANTED.

2. Plaintiff Steven Conway's state law claims are DISMISSED without prejudice.

The clerk of court is directed to enter judgment for defendants and close this case.

Entered this _____ day of May, 2000.

BY THE COURT:

_____
BARBARA B. CRABB
District Judge