

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

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KURTIS L. KING,

Plaintiff,

v.

MATTHEW FRANK in his official capacity;  
GARY R. McCAUGHTRY, in his official  
and individual capacities;  
CURTIS JANSSEN, in his official  
and individual capacities;  
STEVEN SCHUELER, in his official  
and individual capacities;  
DOES 1-100, Health and Segregation  
Complex staff, and both security  
and clinical services staff in their official  
and individual capacities,

Defendants.  
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ORDER

04-C-338-C

Plaintiff Kurtis King is proceeding in this action on several claims, including the following two claims against John or Jane Doe defendants:

- 1) On June 30, 2004, a John or Jane Doe defendant denied plaintiff his prescribed psychotropic medication, causing him to suffer a medical emergency; and
- 2) A John or Jane Doe defendant refused to come to plaintiff's aid while he was

suffering symptoms as a result of not receiving medication.

In an order entered in this case on November 10, 2004, Magistrate Judge Stephen Crocker asked defendants to identify no later than December 1, 2004, which staff member or staff members were responsible for insuring that plaintiff had access to his medication on June 30, 2003, and which staff member or members interacted with plaintiff in response to his requests for medical assistance on the night of July 30 or early morning of July 1. In addition, the magistrate judge told plaintiff that he would have until December 13, 2004, in which to file and serve an amended complaint that identified the Doe defendants but did not alter any other allegations in the complaint. To insure that plaintiff could easily hand-write changes in the body of his complaint to replace all references to the Doe prison officials with the names provided to him by the defendants and to change the caption of the complaint to list the new defendants, the magistrate judge enclosed extra copies of plaintiff's complaint to him with the November 10 order. He then instructed plaintiff as follows:

Specifically, plaintiff should use the second and third copies of the renumbered complaint that this court has enclosed as the template for his amended complaint. Plaintiff shall recaption it as his amended complaint. Plaintiff need not attach to his amended complaint any of the documents attached to his original complaint. Plaintiff should modify ¶ 47 to identify by name who he alleges denied him his amitriptyline on June 30, 2003. Plaintiff should modify ¶ 49 and ¶ 50 to identify which staff members allegedly refused to respond to his requests for medical assistance.

Now, instead of filing an amended complaint, plaintiff has submitted two hand-

written sheets of paper stating,

The plaintiff hereby amends the original civil complaint per Judge Stephen L. Crocker's order on the 10th day of November 2004 in the United States District Court for the Western District of Wisconsin.

Paragraph 47 of the original civil complaint is hereby modified and identifies officer Kevin Fritz, who denied plaintiff his medication during second shift on 6-30-03.

Paragraph 49 of the original complaint is hereby modified and identifies officer Todd Russell, Matt Robinson, Clint Schlieve and Jennifer Opperman as possible suspects who denied plaintiff medical attention on June 30, 2003 or in the early morning of July 1, 2003.

Paragraph 50 of the original complaint is hereby modified and identifies Matthew Frank, Gary R. McCaughtry, Curtis Janssen, Steven Schueler, Does 1-100, Health and Segregation Complex staff and both security and clinical services staff as either being inadequately trained for such events, or do not care about the health and safety of inmates in the Health and Segregation Complex.

First, this submission does not satisfy plaintiff's obligation to amend his complaint to identify each previously unidentified defendant in the body of his complaint and in the caption so that the revised pleading may be served on the newly added defendants. Second, plaintiff's proposed amendment to paragraph 50 is not acceptable. He has simply listed the defendants he named in the caption of his original complaint, including 1-100 John or Jane Does. In this instance, however, plaintiff's failure to identify a defendant who is allegedly responsible for violating his rights as described in paragraph 50 of the complaint does not matter, because plaintiff was not allowed to proceed on a claim arising out of his allegation

in paragraph 50.

Paragraph 50 of plaintiff's complaint reads, "WCI staff is either inadequately trained for such events [his failure to receive his medicine and subsequent request for medical attention] or do not care about the health and safety of inmates in HSC."

Liability under § 1983 must be based on a defendant's personal involvement in the alleged constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). Although an official is considered to be 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, 761 F.2d 360, 369 (7th Cir. 1985); see also Kelly v. Municipal Courts of Marion County, 97 F.3d 902, 908 (7th Cir. 1996, a supervisor cannot be sued simply because it is his responsibility to oversee his subordinates. Gentry, 65 F.3d at 561; Del Raine, 32 F. 3d at 1047; Wolf-Lillie, 699 F.2d at 869.

The United States Supreme Court has held that failure to train serves as a basis for imposing liability under § 1983 only in limited circumstances. City of Canton v. Harris, 489 U.S. 378, 388 (1989). That a particular employee is inadequately trained or that an injury could have been avoided if an individual had better training is not sufficient by itself to

impute liability under § 1983. Id. at 390-91. In certain instances, a supervisor may be held liable for an unwritten custom on the theory that he or she unconstitutionally failed to implement a corrective policy. Cornfield By Lewis v. School Dist. No. 230, 991 F.2d 1316, 1326 (7th Cir. 1993). Under such a theory of supervisory liability, however, a plaintiff is required to allege facts suggesting that the supervisory official had actual or constructive notice that a pattern or series of incidents of unconstitutional conduct was occurring, yet that the supervisor failed to take corrective action. Id.; Jones v. City of Chicago, 787 F.2d 200, 204 (7th Cir. 1986) (requiring "systemic" inaction). Nothing in plaintiff's complaint allows an inference to be drawn that defendant Fritz's failure to give him his amitriptyline on June 30, 2004 and the failure of defendants Fussell, Robinson, Schlieve and Opperman to respond to his calls for assistance on the night of June 30 and early morning of July 1, 2003 was part of a series of incidents of unconstitutional conduct about which supervisory officials were aware and refused to take corrective action.

Therefore, to the extent that the magistrate judge or the parties may have believed that plaintiff was permitted to proceed on a claim against unknown supervisory officials premised on a theory of failure to train, I am clarifying now for the record that plaintiff's complaint does not allege facts sufficient to state a claim upon which relief may be granted with respect to ¶ 50.

With respect to paragraphs 47 and 49, although plaintiff has not submitted an

amended complaint that complies with the magistrate judge's order, rather than delay the action further, I will accept plaintiff's two-page submission as an addendum to the original complaint. In addition, I will modify the complaint caption to list the names of the newly added defendants and to identify the pleading as an amended complaint. Copies of this amended complaint are enclosed with this order to plaintiff and counsel for the existing defendants, and additional copies are being sent to Assistant Attorney General Cory Finklemeier for informal acceptance of service of process on newly added defendants Kevin Fritz, Todd Russell, Matt Robinson, Clint Schlieve and Jennifer Opperman.

#### ORDER

IT IS ORDERED that

1. Plaintiff's motion to amend his complaint is GRANTED to substitute Kevin Fritz in place of the previously unknown defendant identified in paragraph 47 of plaintiff's complaint, and to substitute Todd Russell, Matt Robinson, Clint Schlieve and Jennifer Opperman in place of the previously unknown defendants identified in paragraph 49 of plaintiff's complaint.

2. Plaintiff's December 8, 2004 "amended complaint" (Dkt. #21) shall be attached to plaintiff's original complaint as an addendum. This modified complaint shall be served on the newly added defendants and constitutes the operative pleading in the case.

3. In accordance with the magistrate judge's November 10, 2004 order, the newly-added defendants shall have until January 7, 2005, within which to file and serve their answers to the amended complaint. The original defendants may have until that same date in which to file an answer to the amended complaint or advise the court that they intend to stand on their answer to the original complaint.

4. Plaintiff's claim against any named or unnamed defendants in paragraph 50 of the complaint is DISMISSED for plaintiff's failure to state a claim upon which relief may be granted.

Entered this 15th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge