

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

RONALD ROMANELLI,

Petitioner,

OPINION AND ORDER

v.

07-C-19-C

DALIA SULIENE,
DEPUTY KUHL,
CPT. KUHL and
STEVEN ROWE,

Respondents.

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Ronald Romanelli, a prisoner, contends that each of the respondents violated his constitutional right to adequate medical care while he was incarcerated at the Columbia County jail in 2006.

In an order dated January 12, I concluded that petitioner was unable to pay the full filing fee for this lawsuit. I directed petitioner to make an initial partial payment of \$11.04, which the court has received. Because petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires the court screen petitioner's complaint and deny leave to proceed if the

prisoner's complaint 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(b).

I conclude that petitioner may proceed on his claim that each of the respondents was deliberately indifferent to his gastrointestinal problems. Further, he may proceed on his claim that respondents Deputy Kuhl, Captain Kuhl and Steven Rowe were deliberately indifferent to his vision problems. He may not proceed on his vision claim against respondent Suliene because petitioner never told her of this problem.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). Petitioner has amended his complaint twice since he filed the original one in January. Because the court had not yet screened his complaint when petitioner amended his complaint, he did not need to seek leave of court. Accordingly, I have disregarded all but the most recently filed complaint, dkt. #7. In his second amended complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner was diagnosed with Crohn's disease in January 2004. One third of petitioner's small bowels were "covered with hemorrhages and exudate." That same month, he underwent two operations: a hemicolectomy (removal of a portion of the bowels); and

a resection (to treat a Meckel's diverticulum, which is a bulge in the small intestine). Six inches of petitioner's "innards" were removed during the operation. He was prescribed Asacol for Crohn's disease and Percocet for pain.

Beginning in May 2006, petitioner was incarcerated at the Columbia County jail as a pretrial detainee. He informed staff immediately of his Crohn's disease. They told him, "You will be seen soon."

Several days went by without any followup. Petitioner began experiencing severe stomach pains, flushing of the bowels 15 to 20 times a day, black and bloody stools, dehydration and extreme hunger. Petitioner submitted a request to be examined by the health care providers.

Petitioner was seen by a nurse "sometime later." He told the nurse all the symptoms he was experiencing and asked her for medications and a special diet. She asked petitioner to sign a medical release form so that his records could be obtained from the Sauk County jail, where he had been detained previously, and the Deer River Health Care Center, where his operations had been performed. In addition, she placed him on a waiting list to see a doctor.

Between one and two weeks later, petitioner was seen by respondent Dalia Suliene, a general practitioner. Petitioner repeated his symptoms and told Suliene that she could obtain his medical records from the other institutions to prove the existence of his

conditions. After Suliene performed a routine physical exam, she told petitioner he did not have Crohn's disease, even though the exam she conducted could not have detected the disease. Suliene took no action to treat petitioner.

Petitioner wrote several letters and grievances to jail officials about the symptoms described above as well as "vision issues" he was experiencing. Several days later, respondent Deputy Kuhl, a sergeant, met with him. Petitioner told Kuhl about his gastrointestinal problems and his need for eyeglasses, without which he was unable to see. He experienced headaches and migraines because he did not have glasses. (Although petitioner had a prescription, a fact he told respondent Kuhl, petitioner was without eyeglasses at the time, for reasons he does not explain.) Kuhl said he would set up another appointment with Dr. Suliene.

Another several days passed before petitioner had his second meeting with respondent Suliene. She again denied that petitioner had Crohn's disease, but she had petitioner sign another medical release form. She told petitioner he could go to the hospital for a blood test, but it would be a waste of time because a blood test would not prove he had the disease. Suliene offered no other tests or treatment.

Petitioner continued to write letters and grievances, but these did not result in any action. During the two months and 14 days petitioner was incarcerated at Columbia County jail, he received no medical treatment other than the two consultations with respondent

Sulienne. Petitioner lost 24 pounds during this time period.

Respondent *Captain* Kuhl (distinguished from *Deputy* Kuhl) received petitioner's letters and grievances but did not respond to them. Instead, he forwarded them to Deputy Kuhl. Captain Kuhl and respondent Steven Rowe (the sheriff) failed to train their staff to respond appropriately to medical complaints.

In August 2006, petitioner was transferred to Dodge Correctional Institution, where he was immediately treated for severe intestinal inflammation through several forms of medication and a special diet. In addition to his Crohn's disease, petitioner was diagnosed with an E. Coli infection, which petitioner believes was caused by the lack of treatment he received at Columbia County jail.

DISCUSSION

I understand petitioner to contend that respondents violated his rights under the due process clause by failing to provide him with adequate medical treatment for his Crohn's disease and his poor vision while he was a detainee at the Columbia County jail. (The due process clause provides the legal standard because the Eighth Amendment applies only to those incarcerated persons who have been convicted.) In determining whether this right has been violated, the court of appeals has held that the standard is the same as that under the Eighth Amendment: whether the defendants were "deliberately indifferent" to a "serious

medical need.” Murphy v. Walker, 51 F.3d 714 (7th Cir. 1995).

A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be 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. Id. A medical need may be serious if it “significantly affects an individual's daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), if it causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if otherwise subjects the detainee to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials were aware that the detainee needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, petitioner’s claim has three elements:

- (1) Did petitioner need medical treatment?
- (2) Did respondents know that petitioner needed treatment?
- (3) Despite their awareness of the need, did respondents fail to take reasonable measures to provide the necessary treatment?

Petitioner does not have to allege the facts necessary to establish each of these elements at the pleading stage, but they provide the framework for determining whether petitioner has alleged enough to give respondents notice of his claim and whether there is

a set of facts consistent with petitioner's allegations that would provide him with relief. Kolupa v. Roselle Park District, 438 F.3d 713, 715 (7th Cir. 2006); Doe v. Smith, 429 F.3d 706, 708 (7th Cir. 2005).

With respect to the need for medical treatment, petitioner identifies two conditions for which he sought aid: Crohn's disease and vision problems. His allegations relating to Crohn's disease are undoubtedly sufficient to establish a serious medical need at the pleading stage. Petitioner alleges that his symptoms were severe: stomach pains, flushing of the bowels 15 to 20 times a day, black and bloody stools, dehydration and extreme hunger. Further, he had been taking medication previously for his condition.

Poor vision is not as obviously serious and petitioner's allegations relating to this health issue are scant. Nevertheless, courts have recognized that limited eye sight may constitute a serious medical need in some instances. E.g., Koehl v. Dalsheim, 85 F.3d 86, 88 (2d Cir. 1996) (need for eyeglasses is serious medical condition when inmate suffered headaches, his vision deteriorated and his daily activities were impaired). Petitioner alleges that he had a prescription for eye glasses, suggesting that a doctor perceived a need for them, that he was unable to see without them, suggesting that his daily activities were significantly impaired by not having them, and that he experienced migraines and headaches without his glasses. Accordingly, I conclude that petitioner's allegations are sufficient at this stage to establish that he had serious medical needs related to both his gastrointestinal problems and

his eyesight.

The remaining two elements of petitioner's claim must be analyzed separately with respect to each respondent. Petitioner has named four Columbia County officials, each of whom had different responsibilities and knowledge of different facts. I will address each of them in turn.

Dr. Dalia Suliene

With respect to petitioner's Crohn's disease, petitioner alleges that he told respondent Suliene all of the gastrointestinal symptoms he was experiencing. Although she denied that he had Crohn's disease, I may not infer at this stage that she was not aware of a need for treatment. Even if she honestly did not believe that petitioner had a particular disease, petitioner's own recitation of his symptoms could be enough to put respondent Suliene on notice that he had a serious medical condition. Further, petitioner alleges that Suliene made no effort to diagnose his condition and gave him no medical treatment while he was incarcerated at the Columbia County jail. This is sufficient to state a claim of deliberate indifference.

However, petitioner will not be allowed to proceed against respondent Suliene on his eye care claim. Petitioner's allegations show that he never complained to Suliene about his vision problems, so she was not aware of them. Because she was not aware of this problem,

she cannot be held liable under the due process clause.

Deputy Kuhl

Petitioner told Deputy Kuhl about his gastrointestinal problems and his inability to see, so the only question is whether Kuhl took reasonable measures to attempt to provide petitioner with the treatment he needed. Kuhl did not ignore petitioner's complaints but responded by seeking consultation with a doctor. The court of appeals has held on multiple occasions that nonmedical staff act reasonably when they seek assistance from medical professionals. Johnson v. Doughty, 433 F.3d 1001, 1010-11 (7th Cir. 2006); Greeno v. Daley, 414 F.3d 645, 656 (7th Cir. 2005). As a lay person, Kuhl would not have known how to diagnose or treat petitioner's symptoms.

However, I cannot conclude at this stage that petitioner will be unable to prove a claim against Deputy Kuhl. Deliberate indifference may be demonstrated by more than just a complete disregard for the detainee's health. An intentional *delay* in treatment may violate the Constitution as well. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). Petitioner alleges that despite his complaints of severe symptoms, Kuhl did not respond for several days and that several more days passed before Kuhl set up another appointment with Suliene. It may be that these delays were beyond Kuhl's control. However, at this stage, I must "indulge every factual assumption in the plaintiff's favor." Waypoint Aviation Services, Inc. v. Sandel

Avionics, 469 F.3d 1071, 1072 (7th Cir. 2006). Because petitioner may be able to prove that respondent's delay in responding to his gastrointestinal and vision problems violated the Constitution, I will allow him to proceed on these claims.

Captain Kuhl and Steven Rowe

_____ It is unclear what Captain Kuhl knew about petitioner's health problems. Petitioner alleges only that he sent complaints to Captain Kuhl, who then forwarded them to Deputy Kuhl. At this stage, I will assume that Captain Kuhl read the complaints and knew petitioner had serious medical needs. Thus, the question is whether it was reasonable for Captain Kuhl to take no action to help petitioner other than forward the complaints to someone else.

I believe it is too early in the lawsuit to make that determination definitively. Whether it was reasonable for Captain Kuhl to delegate this task is contingent on a number of factors, including what Captain Kuhl's and Deputy Kuhl's relative responsibilities were and what Captain Kuhl knew about Deputy Kuhl's willingness and ability to handle medical complaints. Of course, in any organization, delegation of responsibility is not only understandable but necessary. At the same time, the buck has to stop somewhere or no one may be held accountable. __

_____ Accordingly, I conclude that petitioner may proceed on his claim that Captain Kuhl

was deliberately indifferent to petitioner's serious medical needs related to his gastrointestinal and vision problems. However, I emphasize that petitioner will have to come forward with evidence at later stages of the litigation showing both that Captain Kuhl was aware of these problems and that it was unreasonable for Captain Kuhl to delegate responsibility for addressing the complaint to Deputy Kuhl.

Petitioner alleges that both Captain Kuhl and respondent Steven Lowe (the Columbia County sheriff) failed to properly train their employees to handle medical complaints. The situations in which a failure to train may subject a government official to liability for a constitutional violation are quite limited. A supervisor may not be held liable simply because he had authority over someone else that violated a detainee's constitutional rights. Rather, the plaintiff must show that the supervisor's actions (or his failure to act) helped to cause the constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir.1995). More specifically, a plaintiff must show that the official knew that his training was inadequate to handle a particular situation and that a constitutional violation was likely without improvements. Kitzman-Kelley v. Warner, 203 F.3d 454 (7th Cir. 2000); Robles v. City of Fort Wayne, 113 F.3d 732 (7th Cir. 1997).

Although petitioner's allegations are sparse, they are sufficient to place respondents on notice of his claim, which is all that he was required to do to satisfy the pleading requirements of Fed. R. Civ. P. 8. Cf. Bennett v. Schmidt, 153 F.3d 516, 518 (7th

Cir.1998) (stating that allegation of "I was turned down a job because of my race" is enough to state race discrimination claim). However, at later stages of the litigation, petitioner will be required to show how respondents' training was inadequate and how it contributed to a constitutional violation. In addition, he will have to show that respondents knew that their failure to train was likely to lead to constitutional violations. Finally, although it can be assumed that respondent Rowe, as the sheriff, had responsibility for training employees, this assumption is not necessarily appropriate with respect to captain Kuhl. Thus, a threshold evidentiary matter for petitioner's claim against captain Kuhl under a failure to train theory will be whether Captain Kuhl has such responsibility.

ORDER

IT IS ORDERED that petitioner Ronald Romanelli is

1. GRANTED leave to proceed on his claims that

(a) respondents Dalia Suliene, Captain Kuhl and Deputy Kuhl were deliberately indifferent to petitioner's gastrointestinal problems, in violation of the due process clause;

(b) respondents Captain Kuhl and Deputy Kuhl were deliberately indifferent to petitioner's vision problems, in violation of the due process clause;

(c) respondents Captain Kuhl and Steven Rowe denied petitioner adequate

medical care by failing to train their staff, in violation of the due process clause;

2. DENIED leave to proceed on his claim that respondent Suliene was deliberately indifferent to his vision problems. This claim is DISMISSED for petitioner's failure to state a claim upon which relief may be granted.

FURTHER IT IS ORDERED that

1. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

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

3. The unpaid balance of petitioner's filing fee is \$ 338.96; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

4. Copies of petitioner's complaint and this order are being forwarded to the United

States Marshal for service on respondents.

Entered this 12th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge