IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RAYMOND BILL EVANS,

Petitioner,

v.

SAUK COUNTY SHERIFF;
DANE COUNTY SHERIFF;
JOHN DOE/DOCTOR;
JOHN DOE MEDICAL CONTRACTOR;

Respondents.

OPINION and ORDER

07-C-328-C

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This is a proposed civil action for monetary relief brought under 42 U.S.C. § 1983. At times relevant to this complaint petitioner Raymond Bill Evans was incarcerated at the Sauk County jail in Baraboo, Wisconsin. In his complaint, petitioner alleges that respondents Dane County sheriff, Sauk County sheriff and John Doe Doctor and John Doe Medical Contractor violated his constitutional rights by providing him with inadequate medical care after he fell down the stairs at the Sauk County jail and was injured. Petitioner requests leave to proceed in forma pauperis under 28 U.S.C. § 1915 and has made the initial partial payment required under that statute.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or 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. § 1915(e)(2).

From petitioner's complaint, I draw the following factual allegations.

ALLEGATIONS OF FACT

On January 5, 2007, petitioner was a pretrial detainee in the custody of respondent Dane County sheriff. However, because of limited bed space at the Dane County jail, petitioner was housed at the Sauk County jail. While walking down stairs, petitioner slipped and fell because his uniform pants were too large and became caught under his feet. After petitioner fell, he could not move and was in a great deal of pain. Respondent Sauk County sheriff and his deputies insisted that petitioner get up. Petitioner told the deputies that they should not move him and should wait for an ambulance or doctor to arrive.

The deputies continued to insist that petitioner get up and walk. When petitioner

told them he was unable to get up, the deputies moved him anyway and placed him in a wheelchair, which caused him additional pain. The deputies moved petitioner to a room where they could watch him, but did not call for medical help. Petitioner was unable to walk, and had to crawl on his hands and knees to get his meal tray and to use the toilet. The deputies laughed at petitioner as he did this.

Petitioner was not examined by a doctor until more than 13 hours after he fell down the stairs. Respondent John Doe doctor looked at petitioner's back and told him that he would be all right. He gave petitioner some pills to take. Petitioner told respondent John Doe doctor that he was experiencing pain in his lower back. In response, respondent John Doe doctor told petitioner that he was giving petitioner the pills for his pain. Respondent John Doe doctor did not ask petitioner what had happened, order x-rays or appear to take petitioner's injuries seriously.

DISCUSSION

A. Respondents Dane County Sheriff, Sauk County Sheriff and John Doe Medical Contractor

At the time of his accident, petitioner was in the custody of respondent Dane County sheriff. Because of limited bed space at the Dane County jail, petitioner was housed at the Sauk County jail. Petitioner argues that respondent Dane County sheriff is responsible for

his injury because he contracted with the Sauk County jail for overflow housing for inmates. However, liability under 42 U.S.C. § 1983 arises only through a respondent's personal involvement in a 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). Therefore, because respondent Dane County sheriff was not directly involved with petitioner's treatment after he fell down the stairs at the Sauk County jail, petitioner will be denied leave to proceed against him. In addition, because it appears that petitioner intends to allege that the Sauk County sheriff is liable in his capacity as supervisor of the Sauk County jail, petitioner will be denied leave to proceed on that claim as well.

Next, petitioner sues a "John Doe Medical Contractor." If, as it appears, he is intending to sue the agency or entity responsible for contracting medical services for prisoners who are housed temporarily in Wisconsin's county jails, his claim fails at the outset. He has alleged nothing from which an inference may be drawn that this unknown entity or agency knew that he needed medical care in the first place, and certainly not that it knew that the care he would receive from the doctor who examined him would be insufficient. It would be speculation of the most extreme kind to imagine that the agency or entity who contracts for medical services would create a policy or contract with medical providers to violate the constitution in response to prisoners' medical needs. Therefore, petitioner will be denied leave to proceed on claim against "John Doe Medical Contractor"

as well.

B. John Doe Doctor

Because petitioner was a pretrial detainee at the time of the events giving rise to this complaint, his § 1983 claims are evaluated under the due process clause of the Fourteenth Amendment rather than the Eighth Amendment. Henderson v. Sheahan, 196 F.3d 839, 845 n.2 (7th Cir. 1999). Protections for pretrial detainees under the due process clause are "at least as great as the Eighth Amendment protections available to a convicted prisoner." Washington v. LaPorte County Sheriff's Dept., 306 F.3d 515, 517 (7th Cir. 2002) (quoting City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 244 (1983)). The due process clause protects pretrial detainees from deliberate indifference to their serious medical needs. Murphy v. Walker, 51 F.3d 714, 717 (7th Cir. 1995) ("Pretrial detainees, who are protected by the Due Process Clause, will state a claim for inadequate medical treatment if they allege deliberate indifference to their serious medical needs.").

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 causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it 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 prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Petitioner alleges that he could not move after he fell down the stairs and that he experienced such severe back pain that he had to crawl to receive his meal tray and use the toilet. It is possible to infer from these allegations that petitioner's back pain was sufficiently severe that it constituted a "serious medical need."

Petitioner names as a respondent "John Doe Doctor." Therefore, I presume that petitioner intends to allege that the doctor who treated him after his fall was deliberately indifferent to his serious medical need. Petitioner asserts that respondent John Doe doctor examined his back and gave him pills to reduce his pain in response to petitioner's statements that he was experiencing severe pain in his lower back. Petitioner was unhappy that respondent John Doe doctor did not seem to take his condition more seriously and did not order x-rays. Although petitioner may not have received exactly the type of care he wanted, x-rays and a thoughtful bedside manner, under no circumstances does he state a claim for deliberate indifference against respondent John Doe Doctor. Prisoners are constitutionally entitled to adequate medical care, but are not entitled to the particular course of treatment they prefer. Estelle v. Gamble, 429 U.S. 97, 107 (1976); Snipes v.

DeTella, 95 F.3d 586, 591 (7th Cir. 1996) ("medical decisions . . . such as whether one course of treatment is preferable to another, are beyond the [Eighth] Amendment's purview.").

ORDER

IT IS ORDERED that

1. Petitioner Raymond Bill Evans is DENIED leave to proceed in forma pauperis on his Eighth Amendment claims against respondents Dane County Sheriff, Sauk County Sheriff, John Doe Medical Contractor and John Doe Doctor.

2. This case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted.

3. The unpaid balance of petitioner's filing fee is $340.11; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

4. A strike will be recorded against petitioner pursuant to § 1915(g).

5. The clerk of court is directed to close the file.

Entered this 1st day of October, 2007.

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