IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHAD GOETSCH,

Plaintiff,

v.

DR. LAETITIA LEY,
DR. MIKE VANDENBROOK and
DR. SCOTT RUBIN-ASCH,

Defendants.

OPINION AND ORDER

09-cv-228-bbc

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In this civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Chad Goetsch, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, contends that defendants Laetitia Ley, Mike Vandenbrook and Scott Rubin-Asch violated his rights under the Eighth Amendment. Plaintiff was granted leave to proceed on claims that (1) defendant Ley refused to treat plaintiff's depression and suicidal thoughts; (2) defendant Vandenbrook failed to provide sufficient treatment to plaintiff and refused to allow him to seek mental health treatment at the Wisconsin Resource Center or in areas of the prison where better care was available; and (3) defendant Rubin-Asch provided plaintiff only minimal mental health treatment.

Now before the court are the parties' cross-motions for summary judgment. I conclude that plaintiff has failed to adduce evidence to support his Eighth Amendment claims. It is undisputed that each defendant provided plaintiff with mental health treatment. Although Ley did not succeed in preventing plaintiff from cutting himself, she took reasonable measures to address his concerns, if not in the way plaintiff preferred. As for Vandenbrook and Rubin-Asch, after plaintiff cut himself, each had regular contact with him at different times and each addressed his mental health concerns. They might not have provided the quantity or quality of psychological treatment that plaintiff requested, but the evidence does not allow an inference that their treatment was so inadequate as to suggest recklessness giving rise to an Eighth Amendment claim.

Defendants' motion for summary judgment will be granted and plaintiff's motion will be denied. I will also deny a motion for continuance of the trial date filed by plaintiff, which is now moot.

From the parties' proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

At all relevant times, plaintiff was incarcerated at the Columbia Correctional Institution and defendants were employed there by the Wisconsin Department of

Corrections. Defendants Laetitia Ley and Mike Vandenbrook were psychological associates. Defendant Scott Rubin-Asch was a psychologist.

In 1988, before plaintiff was incarcerated, he attempted suicide by overdosing and cutting his wrists and he was sent to Mendota Mental Hospital. Plaintiff has been taking anti-depressant medication since 2001. On April 3, 2003, while at the Waupun Correctional Institution, plaintiff was placed on observation status for stating that he "felt like hurting himself." On November 23, 2005, plaintiff was given a diagnosis of major depressive disorder.

On February 21, 2006, plaintiff was transferred to the Columbia Correctional Institution, where he was placed in an intake unit with another prisoner. Plaintiff began experiencing a "feeling of being psychically attacked, which consisted of a soul freezing depression, a feeling of intense anxiety, suffocation, extreme isolation, and auditory hallucinations along with suicidal feelings." Plt.'s PFOF#11. He reported to a guard that he was suffering from anxiety and depression and was hearing voices. About 30 to 40 minutes after plaintiff complained to the guard, defendant Ley arrived. Before meeting with plaintiff, defendant Ley consulted with her supervisor and reviewed plaintiff's psychological services and social services file. She noted that the staff at the Wisconsin Resource Center had indicated that plaintiff had "malingered symptoms for secondary gain" Dfts.' Br., dkt. #68, at 2, or "exaggerated his symptoms as a cry for help." Id. Defendant Ley also noted

that plaintiff had self-reported voices in the past and clinical staff at the Wisconsin Resource Center had concluded that the reports lacked veracity and were not consistent with observable symptoms and presentation. (Plaintiff attempts to dispute these facts by saying that no such findings were present in his file and no one at Wisconsin Resource Center made such statements. He did not submit admissible evidence to support this averment, such as his entire psychological file or even an averment that he had reviewed the entire file and was not able to find the statements Ley says she found in his file. Therefore, defendant's proposed fact must be accepted as undisputed.)

During her meeting with plaintiff at his cellfront, Ley told plaintiff that she had reviewed his file and found that he did not have a history of mental illness. Plaintiff told her that he was seriously mentally ill and should be "red-tagged" (given a restriction requiring him to be placed in a single-cell). He said that he needed a single cell because he was experiencing severe or intense anxiety; was hearing voices coming from inside his head, including one that was commenting on his behaviors; had had a single cell for 15 out of his 16 years of incarceration; felt as though his mental illness was aggravated by having a cellmate; felt as though he were suffocating, although he could breathe without problems; and felt incapable of staying still in his cell. In a report she wrote later, Ley described these latter two symptoms as shortness of breath and claustrophobia. (The parties dispute whether plaintiff also told Ley that he was experiencing severe feelings of isolation and severe

depression, a feeling that he was being "psychically attacked," that he would harm or kill himself if not placed on observation and that nothing except a single cell would alleviate his symptoms.)

Defendant Ley noted that plaintiff did not have accelerated speech or accelerated physical activity, his breathing rate was normal and he was able to speak easily without interruptions caused by shortness of breath. Defendant Ley also noted that plaintiff showed orientation to person, place, time and situation, with organized thoughts and an irritable mood. Plaintiff maintained eye contact and was able to engage with defendant Ley. Regarding plaintiff's report of hallucinations from inside his head, Ley considered the fact that such reports are atypical and are clinically considered as a possible indication of exaggerated or fabricated symptoms. (Plaintiff attempts to dispute that a report of hearing voices from inside the head is atypical but he does not offer any admissible evidence. He offers only hearsay testimony from unidentified prisoners, an unnamed documentary and his assertion that it is "common knowledge in our culture [that] the mentally ill [] hear voices in their heads.") Defendant Ley found that plaintiff's concentration, attention and memory were within normal limits and he did not exhibit symptoms of thought disorder, paranoid ideation, distraction by internal stimuli or anxiety disorder.

Defendant Ley concluded that plaintiff's reported symptoms differed from his presentation and observable symptoms. From her observations, she determined that plaintiff

did not appear to represent an immediate risk to himself and she told plaintiff that he was not "single cell material." Ley also told plaintiff that she had reviewed his file and he did not have a history of mental illness. (The parties dispute whether Ley also told plaintiff during the interview that she would not see him out of the cell and that the prison did not "give clinical red-tags" at all.)

Plaintiff then asked Ley, "What do you have to do around here to get a red-tag, beat up your celly or something?" (The parties dispute whether Ley threatened to write him a conduct report for "threatening to beat up his celly" or simply asked him whether he was making a threat and warned him that further similar statements would be reported to security.) Plaintiff became very angry and told Ley "If you don't send me to DS-1 [single-cell segregation] right now, I'm going to come out at supper and cause a serious disturbance." Defendant Ley decided to report plaintiff's statements to security, completed an incident report, maintained the Wisconsin Resource Center's diagnoses of "Dysthymic Disorder and Personality Disorder NOS with Schizoid Tendencies" and consulted with the psychological services supervisor and the DS-1 clinician to insure that plaintiff received a followup visit from staff at the DS-1 segregation unit when he arrived there.

Plaintiff was then transferred to the DS-1 segregation unit. Under prison policies, psychological services staff are required to conduct a file review and a face-to-face interview within one working day of a prisoner's placement in a segregated setting if that prisoner has

been classified as "MH-2" or "MH-3" (mental health classifications). Defendant Vandenbrook was plaintiff's assigned clinician in DS-1. Vandenbrook did not review plaintiff's file or conduct a face-to-face interview with plaintiff within the first 24 hours of his stay in segregation.

Once in DS-1, plaintiff felt slightly better without a cellmate. However, eventually, his symptoms started getting worse. He felt a sense of "horrific" despair, felt as though he were being "psychically attacked," felt lower back pain and fatigue from pacing and felt suffocated. Plaintiff asked the guards numerous times to summon a psychologist because he felt suicidal and was hearing voices. The guards told him they would call one. That same day, plaintiff wrote notes to the clinical staff describing his symptoms and saying that he was thinking about committing suicide. Plaintiff also wrote a note to defendant Ley asking her to send someone else to talk to him and saying that he was thinking about committing suicide. No mental health professional came to see plaintiff that day.

The next day, February 22, 2006 (one day after plaintiff's placement on DS-1), plaintiff received a conduct report for "Threats, Disruptive Conduct and Lying." The charge for lying stemmed from Ley's assertion in an incident report that plaintiff had faked a panic attack. The charges for threats and disruptive conduct involved his statements about beating up his cellmate and creating a disturbance. After plaintiff received the conduct report, he told the guards again that he wanted to see someone for clinical services and wrote a note

to clinical staff, but he was not seen.

On February 23, 2006, plaintiff was given a razor. He used it to cut five vertical slashes on his right inner forearm. Plaintiff was seen by the prison health staff and was sent to the local emergency room for medical treatment of his injury, which required staples.

Upon plaintiff's return to the prison on February 23, 2006, he was placed on "observation status." He wore a smock and was left without a pillow or soap. He had only a hard plastic mattress. Defendant Vandenbrook spoke with him briefly for a few minutes through plaintiff's cell door. Plaintiff asked whether he could see defendant Vandenbrook out of the cell for a therapy session, explaining that he could not talk in front of the other prisoners. Defendant Vandenbrook told plaintiff that he could not see him for out-of-cell therapy because security would not allow him to do so. Under prison policies, psychologists were required to "work with security staff to make arrangements for [psychological] interview[s] to be conducted in a private location" but personal interviews called "substantial encounters" may be conducted at a cellfront if the acoustics of the unit allowed private conversation or if security staff has determined that "removal of the patient from the cell would present a substantial security risk."

Plaintiff also asked defendant Vandenbrook whether he could be transferred to the Wisconsin Resource Center. (The parties dispute whether Vandenbrook told plaintiff that transfer to the Wisconsin Resource Center was "a possibility".) In response to defendant

Vandenbrook's question about how he was feeling, plaintiff said that he was frustrated, depressed and hearing voices. Defendant Vandenbrook told plaintiff that he should get some rest. He determined that plaintiff remained at risk for self-harm and placed him in observation status.

Defendant Vandenbrook saw plaintiff again the next day, February 24, 2006, noting that plaintiff was calm and coherent but his mood remained depressed. Defendant Vandenbrook continued plaintiff's placement in observation, concluding that he remained at risk for self-harm.

On February 27, 2006, Vandenbrook saw plaintiff and asked him whether he was "feeling a little better" and whether it was "okay for us to take you off obs[ervation status]." Plaintiff said "yes" because he wanted to get out of observation. Plaintiff was "future oriented" and denied having thoughts of self-harm. Relying on plaintiff's responses and behavior, defendant Vandenbrook released him from observation status.

Defendant Vandenbrook continued to have contacts with plaintiff during segregation rounds. During their talks, Vandenbrook would ask whether plaintiff was planning to hurt himself and needed to be placed in observation and plaintiff would say "no." Plaintiff did not receive any therapy sessions from defendant Vandenbrook.

Plaintiff continued to ask defendant Vandenbrook during segregation rounds whether he could be transferred to the Wisconsin Resource Center. (The parties dispute whether

Vandenbrook told plaintiff that he was "talking to some people" about getting plaintiff transferred to the Wisconsin Resource Center.) Defendant Vandenbrook had the professional discretion to refer any patient to the Wisconsin Resource Center. He did not refer plaintiff to the Wisconsin Resource Center because he believed that plaintiff would not have benefited from the services that the Wisconsin Resource Center offered, that the Columbia Correctional Institution clinicians could treat plaintiff's mental illness as well as the clinicians at the Wisconsin Resource Center could and that plaintiff had already shown he had the coping skills necessary to function in a regular correctional environment because he had remained at Waupun Correctional Institution without incident for a long time. Plaintiff wanted to return to the Wisconsin Resource Center because he had received one hour of therapy a week when he had been there.

While plaintiff was on observation status, he received a conduct report for "Manufacture of Weapons," "Alteration of Property," "Disfigurement" and "Disruptive Conduct" for cutting himself with the razor. On March 10, 2006, a hearing was held on the charges. At the hearing, plaintiff was found guilty, given additional time in segregation and charged $800 for restitution. After the hearing, plaintiff told Vandenbrook about his conduct report and Vandenbrook told him "they usually do that." Under prison policies, psychological services staff can provide mental health input at a major conduct report hearing. Vandenbrook did not advise the hearing committee on the effects of giving plaintiff

additional time in segregation and restitution.

On March 31, 2006, defendant Vandenbrook recommended that plaintiff be placed in HU-7, which mainly houses mentally ill prisoners, because his behavior had been good, aside from the self-harm incident in February. Vandenbrook's recommendation was not followed; Brian Franson declined to move plaintiff after seeing that plaintiff had "too many restrictions." Instead, on April 13, 2006, plaintiff was moved to the DS-2 unit.

Defendant Rubin-Asch was plaintiff's regular clinician at the DS-2 unit. After plaintiff had been on that unit for several days, he saw Rubin-Asch during triage rounds. Plaintiff told Rubin-Asch that he was suffering from severe depression, severe stress, severe anxiety that caused him to pace in his cell most of the day and auditory hallucinations of two people talking to him. Plaintiff also told defendant Rubin-Asch that his "astral and emotional bodies" were being controlled by some unseen force that injected him with pure pain so bad he wanted to kill himself but the force would not allow him to do so.

Most of defendant Rubin-Asch's interviews with prisoners were conducted at cellfronts, but plaintiff said he did not want to talk about clinical concerns with staff at his cellfront. He was concerned that other prisoners would hear his private medical information. Plaintiff requested regular therapy sessions and defendant Rubin-Asch agreed to see him out of his cell on "Wednesdays" when he held his regular out-of-cell sessions. (The parties dispute whether Rubin-Asch "agreed" that he could not give plaintiff adequate therapy at his

cellfront.)

From March 2006 to the end of May 2006, defendant Rubin-Asch saw plaintiff twice for an out-of-cell therapy session for 20 to 30 minutes. On other occasions, clinical support staff member Dez Neef would come to cancel plaintiff's therapy sessions with Rubin-Asch. Security allowed defendant Rubin-Asch only one hour a week to meet with no more than two to three prisoners, despite the fact that he received 15 to 20 requests for out-of-cell interviews. Because the waiting list was long for out-of-cell interviews, prisoners often had to wait several weeks for this type of opportunity. (Plaintiff alleges that defendant Rubin-Asch saw the same prisoners every week for two to three hours instead of seeing all prisoners regularly, averring that a guard would call out the same prisoners' numbers each Wednesday. However, he fails to explain how he knew that the guard was calling out the prisoners to be seen by Rubin-Asch for therapy sessions. Because plaintiff's assertion that Rubin-Asch saw the same prisoners each week lacks foundation, it must be disregarded.)

On three occasions, plaintiff told guards to call defendant Rubin-Asch because he felt as if he were having a nervous breakdown, was hearing voices and was suffering from severe depression. Plaintiff heard the guards page Rubin-Asch, but Rubin-Asch did not come to see him. However, whenever plaintiff asked for clinical contact and Rubin-Asch was not able to see him, he was seen at his cellfront by either Vandenbrook or clinical support specialist Dez Neef.

On June 9, 2006, defendant Rubin-Asch received a letter from plaintiff stating that the therapy he was receiving was helping. (The parties dispute whether before plaintiff sent this letter he complained to Rubin-Asch that the rare therapy sessions were not enough to help his mental illness and Rubin-Asch responded that if that were so, plaintiff could "forget about getting more therapy" or getting his "red-tag reinstated.") On June 28, 2006, defendant Rubin-Asch gave plaintiff clinical clearance for a single cell because of his mental health problems and Rubin-Asch's concerns about the stability of his mental and emotional state. Plaintiff was assigned a single cell temporarily and was not to have double cell status for six weeks. On June 29, 2006, plaintiff was released from segregation and was moved to general population.

OPINION

A. Standard of Review

Under Fed. R. Civ. P. 56, summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." Goldstein v. Fidelity & Guaranty Ins. Underwriters, Inc., 86 F.3d 749, 750 (7th Cir. 1996) (citing Fed. R. Civ. P. 56); see also Celotex v. Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from undisputed facts should be drawn in favor of the nonmoving party. Baron v. City of Highland Park, 195 F.3d 333, 338 (7th Cir. 1999); see also

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). However, the nonmoving party cannot simply rest upon the pleadings once the moving party has made a properly supported motion for summary judgment; instead, the nonmoving party must "set out specific facts showing a genuine issue for trial." Fed. R. Civ. P 56(e)(2).

B. Eighth Amendment Deliberate Indifference

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration," Estelle v. Gamble, 429 U.S. 97, 103 (1976), and to protect prisoners from a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 837 (1994). A prison official violates the Eighth Amendment if he is "deliberately indifferent" to a prisoner's "serious medical need" or a "substantial risk" that a prisoner will suffer serious harm, Estelle, 429 U.S. at 104-05; Farmer, 511 U.S. at 844. Deliberate indifference requires the defendants to have (1) subjectively known of a serious medical need or substantial risk of serious harm and (2) disregarded the medical need or risk of harm or failed to take reasonable measures to abate it. Farmer, 511 U.S. at 847; Wynn v. Southward, 251 F.3d 588, 593 (7th Cir. 2001).

A plaintiff alleging deliberate indifference who has received medical care addressing his health care needs must show that the treatment he received was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" plaintiff's

serious medical condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996). Mere disagreement with a doctor's medical judgment, Edwards v. Snyder, 478 F.3d 827, 831 (7th Cir. 2007), inadvertent error, negligence, malpractice or even gross negligence in providing treatment is insufficient to establish deliberate indifference. Washington v. LaPorte County Sheriff's Department, 306 F.3d 515 (7th Cir. 2002); see also Sanville v. McCaughtry, 266 F.3d 724, 735 (7th Cir. 2001) (in suicide case, question was whether "minimally competent doctor in [treating official's] shoes" would have been aware of a substantial risk of serious harm).

The need to treat a serious mental illness can qualify as a "serious medical need." Sanville, 266 F.3d at 734 (citation omitted). In addition, a prisoner who is at a substantial risk of committing suicide or seriously injuring himself faces a "substantial risk of serious harm." Cavalieri v. Shepard, 321 F.3d 616, 620-21 (7th Cir. 2003). Thus, prison officials treating mentally ill prisoners at risk of self-harm must respond both to the mental health needs of the prisoner and the risk of self-harm. Of course, these questions often overlap (proper mental health care may reduce a risk of self-harm), but not always (mental health care may not help a prisoner willing to hurt himself for attention). In any event, prison officials must insure that both matters are being addressed.

This case involves both mental illness and threats of self-harm. Plaintiff suffers from a personality disorder and depression. He has attempted suicide in the past and has been

on anti-depressant medication for some time. Defendants concede that they knew he had mental health needs; indeed, each of them provided mental health services to him at some point during the time in question. A reasonable jury could find that plaintiff's mental health problems were sufficiently serious to be considered a "serious medical need." In addition, during the period in question, plaintiff cut himself and contemplated suicide. Thus, the questions in this case are (1) whether any defendant provided "blatantly inappropriate" treatment for plaintiff's mental health needs and (2) whether any defendant knew that plaintiff was at risk of self-harm and failed to take reasonable measures to prevent an incident of self harm.

1. Defendant Ley

Plaintiff contends that defendant Ley violated plaintiff's Eighth Amendment rights by failing to provide any treatment for his mental illness and by ignoring his threats of self-harm. Plaintiff avers that Ley lied to him, telling him he did not have a history of mental illness and the prison did not give "red-tag" status to prisoners, refused to see him outside his cell and refused to place him in observation. Assuming that the jury believed plaintiff, it would still have insufficient facts to find that Ley failed to take reasonable measures to abate a risk of self-harm or that she provided plaintiff "blatantly inappropriate" mental health treatment.

a. Risk of self-harm

Although defendants deny it, plaintiff avers that he told Ley during their conversation that he would harm or kill himself if he was not placed on observation. Assuming this to be true, a jury could find that plaintiff was at a substantial risk of serious harm, but this alone is not enough to show deliberate indifference. As the Supreme Court explained in Farmer, 511 U.S. at 837, a prison "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." The facts suggest that Ley did not "draw the inference" that plaintiff was at substantial risk of serious harm because she simply did not believe him. She found that his reported symptoms did not match his observable symptoms and that he seemed focused on obtaining a single cell at any cost, saying at first that he needed it for his mental illness, then asking whether a prisoner had to beat up his cellmate to get one and finally just threatening to create a disturbance if he did not get one. Whether she did draw the inference is not a question for the court to decide at this stage. As the Court of Appeals for the Seventh Circuit has explained, whether a prison official believes a prisoner is lying about his symptoms is a fact question for the jury. Greeno v. Daley, 414 F.3d 645, 655 (7th Cir. 2005) (citation omitted).

At this stage, I will assume, as I must, that Ley believed plaintiff and thus "knew" he was at a substantial risk of seriously harming himself, but my doing so does not resolve all

of plaintiff's difficulties. He still must show that Ley failed to take reasonable measures to address that risk. On that point, the facts are undisputed. Ley did not put plaintiff in observation as he requested, but she reported his statements to security, which led to his placement in a single cell in DS-1 segregation, and she talked with the DS-1 supervisor to insure followup treatment. In other words, she helped get plaintiff the single-cell placement he said he needed to assuage the pain of his mental health problems even if she did not do it in the way he wanted.

Plaintiff would have preferred to have been "red-tagged," or even placed in observation (although he now complains about his experience in observation), but Ley's approach of referring him to security for placement in a single cell in segregation instead of "red-tagging" him or placing him on observation cannot be called unreasonable, particularly in light of his self-reported anxiety about having a cellmate and his varied attempts to obtain a single cell in any form. Regardless whether Ley was "treating" him when she referred him to security, her actions were a response to his concerns. Indeed, plaintiff admits that, at least at first, placement in DS-1 eased his symptoms. By referring him to security for placement in DS-1, Ley helped plaintiff receive what he says he needed and made it possible for him to have followup psychological services. Because plaintiff cannot show that Ley failed to take reasonable measures to address the risk that he might harm himself, defendant's motion for

summary judgment will be granted as to plaintiff's claim that defendant Ley failed to protect him from self-harm and plaintiff's motion will be denied

b. Mental health treatment

Next, plaintiff contends that Ley failed to give him any treatment or advice on dealing with his mental illness. Instead, says plaintiff, she ignored his symptoms and was not pleasant during her brief interview with him. According to plaintiff, Ley "purposely misconstrued" his statement about beating up his cellmate, told him she did not believe him when he described his symptoms and told him he had no history of mental illness. She also said he lied about his symptoms, which she described as a "panic attack" in an incident report she wrote that led to a conduct report against plaintiff.

At most, what all these alleged misdeeds show is that Ley was not nice to plaintiff. They do not show that she failed to give plaintiff proper medical care. She listened to plaintiff describe his symptoms, referred him to security in light of his statements during the interview and contacted the DS-1 supervisor to make sure that plaintiff would receive followup services after his placement in DS-1. Plaintiff points out that she did not give him "advice" or "literature," but he has no evidence to show that it was "blatantly inappropriate" for her not to do so during the brief interview at the front of his cell, especially after she concluded he was not a risk to himself, addressed what seemed to be his principal concern

(receiving a single cell), and made sure he would receive psychological services after being transferred. Plaintiff avers that she also refused to see him out of his cell, but he does not explain how her refusal to do so worsened his condition. After all, plaintiff was not reticent; he described his symptoms in detail to her even at the cellfront. He does not suggest any other way her refusal to speak more privately might have affected his mental health treatment, let alone show why it was "blatantly inappropriate" for her to refuse more privacy under the circumstances.

In short, plaintiff does not have evidence to support his contention that defendant Ley acted with deliberate indifference to his serious medical needs by doing no more than examining him, getting him placed in segregation and preparing a followup visit for him. He may not consider her minor attention "treatment," but it did address his psychological health: she assessed his risk of self-harm (although he does not agree with her assessment) and she made sure that he would receive followup treatment. Plaintiff cannot show that her efforts were "blatantly inappropriate" under the circumstances. Therefore, I will grant defendants' motion for summary judgment on his claim that Ley acted with deliberate indifference to his serious medical need and deny plaintiff's motion.

2. Defendant Vandenbrook

Plaintiff was allowed to proceed against defendant Vandenbrook on the claim that after plaintiff's suicide attempt, defendant Vandenbrook failed to provide him therapy on a regular basis and refused to allow plaintiff to seek mental health treatment at the Wisconsin Resource Center or in areas of the prison where better care was available. Dkt. #15. Plaintiff continues to pursue those theories, but in his motion for summary judgment he adds a third allegation that Vandenbrook failed to see plaintiff in the two days preceding his suicide attempt, despite the fact that plaintiff wrote several notes to clinical services and asked the guards to send a psychologist because he was having suicidal thoughts. Because plaintiff was never granted leave to proceed on a claim that Vandenbrook failed to treat or protect him *before* he cut himself, he must obtain leave of the court to proceed on that claim. Fed. R. Civ. P. 15(a)(2) (late requests for leave to amend are allowable only with written consent of opposing party or by leave of court "when justice so requires").

This new claim comes late in the day. Defendants moved for summary judgment on only the two original theories and did not develop arguments or propose facts related to whether Vandenbrook could have done more to treat plaintiff and prevent him from cutting himself in the days leading up to the incident. Plaintiff does not explain why he failed to mention this claim before, despite the fact that he must have known from the beginning that he asked for help during his first days in segregation and received none and that Vandenbrook was his clinical psychologist on the unit. Finally, this claim would be futile.

Plaintiff offers no evidence that Vandenbrook was actually informed of his mental health needs or risk of self-harm before he cut himself, despite the notes plaintiff sent to staff and the requests he made to the guards for help. E.g., Sound of Music Co. v. Minnesota Min. & Mfg. Co., 477 F.3d 910, 923 (7th Cir. 2007) (leave to amend should be denied as futile if claim would not survive motion for summary judgment). Plaintiff has failed to show why his complaint should be amended at this late date; therefore, he may not pursue his new claim that defendant Vandenbrook failed to treat or protect him before he cut himself.

This leaves plaintiff's allegations that defendant Vandenbrook failed to provide adequate therapy and failed to send him to a separate institution or an area of the prison where he would receive mental health treatment. As with Ley, plaintiff fails to offer evidence that Vandenbrook's treatment was constitutionally inadequate.

a. Adequate therapy

Plaintiff contends that Vandenbrook failed to provide adequate treatment because he refused to see plaintiff for out-of-cell sessions and did not "give [plaintiff] any psychotherapy." Plaintiff adds that Vandenbrook failed to provide information about plaintiff's mental health to the disciplinary committee that heard the conduct report plaintiff received after cutting himself. The third allegation may be disposed of quickly: plaintiff has no evidence that Vandenbrook knew about the hearing before it happened. He says only

that Vandenbrook acknowledged after the hearing that "they usually" punish prisoners for cutting themselves. Nothing about that statement suggests that Vandenbrook knew of his specific hearing; if anything, it suggests the opposite.

As to his first and second allegations, plaintiff relies on inadmissible evidence that he says shows that weekly 50-60 minute hearings are proper for patients with his mental health problems. He adds that this is what he received when he was at the Wisconsin Resource Center. Even if plaintiff could show that providing private one-hour sessions each week is the "norm" for treating his mental health needs, this would not support an Eighth Amendment claim against Vandenbrook. As explained above, what plaintiff needs is evidence that Vandenbrook's failure to provide private hour-long sessions was so "blatantly inappropriate" so as to evidence recklessness on Vandenbrook's part.

Plaintiff suggests that the need for psychotherapy sessions after a suicide is "so obvious that even a lay person would perceive the need," Edwards, 478 F.3d at 830-31, but he has not shown that defendant Vandenbrook offered no psychological services. It is undisputed that Vandenbrook saw plaintiff regularly at his cellfront. Plaintiff does not explain the difference between the treatment Vandenbrook provided and the psychotherapy he requested except in terms of time and amount of privacy. Moreover, with the exception of Vandenbrook's daily visits when plaintiff was on observation status, plaintiff does not identify any particular symptoms he described to Vandenbrook or any of Vandenbrook's

responses during his regular checkups of plaintiff. Vandenbrook saw plaintiff every weekday after he cut himself until he was taken off observation, which happened only after plaintiff said he was well enough to be taken off of observation and denied having thoughts of self-harm. (Plaintiff suggests that he was lying about his well-being. Even so, he does not explain why Vandenbrook would have reason to think he was lying.) After plaintiff was released from observation, Vandenbrook continued contacts with plaintiff during segregation rounds, during which plaintiff would tell Vandenbrook that he was not planning to hurt himself and did not need to be placed in observation.

No layperson could determine that the brief, regular interviews Vandenbrook gave plaintiff were entirely inadequate to address self-harm or depression or that one or more longer therapy sessions were required. Assessing the effectiveness of different psychological services on individuals with a certain set of mental health needs is beyond the ability of a layperson. To show that Vandenbrook's brief sessions were constitutionally inadequate, plaintiff needed expert testimony to that effect. He has no such testimony.

Although plaintiff may have preferred more intense treatment, it is not obvious that Vandenbrook's less involved but regular cellfront assessments of plaintiff's mental health needs were inappropriate. No reasonable jury could find it blatantly inappropriate for Vandenbrook to provide plaintiff less time than he requested. Vandenbrook remained attentive to the possibility that plaintiff might harm himself and checked up regularly on his

mental health status. I will grant defendants' motion for summary judgment with respect to plaintiff's claim that Vandenbrook failed to provide him with adequate therapy and deny plaintiff's.

b. Placement in Wisconsin Resource Center or mental health unit

Plaintiff is convinced that he could have received the mental health care he needed had Vandenbrook placed him in the Wisconsin Resource Center or in a mental health unit of the prison. It is undisputed that Vandenbrook did attempt to get plaintiff placed in the mental health unit of the prison, HU-7, but his recommendation for placement was rejected.

As for Vandenbrook's failure to recommend that plaintiff be placed in the Wisconsin Resource Center, Vandenbrook has explained that the determination was based on his professional judgment that plaintiff would not benefit from the services at the Wisconsin Resource Center, could receive adequate services at the prison and already had the coping skills needed to function in the prison. Plaintiff disagrees with Vandenbrook's assessment, and contends that Vandenbrook lied to him about his chances of getting transferred to the Wisconsin Resource Center. On the first point, it is not enough for plaintiff simply to disagree with Vandenbrook; he must present evidence to show both that Vandenbrook was wrong and either knew he was wrong or recklessly disregarded the possibility he might be. As repeated countless times above, even if Vandenbrook is wrong about whether transfer to

Wisconsin Resource Center would have helped plaintiff, he could not be held liable unless plaintiff could show that Vandenbrook's judgment was "blatantly inappropriate." None of the evidence suggests that it was.

As for plaintiff's contention that Vandenbrook lied about plaintiff's having a chance to transfer to the Wisconsin Resource Center, for legal purposes, it does not matter whether he was truthful or not. The only issues are whether transfer was required to provide adequate treatment to plaintiff and whether Vandenbrook otherwise failed to provide adequate mental health care.

In sum, plaintiff has failed to show that Vandenbrook violated his Eighth Amendment rights by failing to get him placed in a mental health unit in the prison or not recommending his transfer to the Wisconsin Resource Center. Therefore, I will grant defendants' motion for summary judgment on his claim that Vandenbrook failed to get him placed in a proper treatment setting and deny plaintiff's motion.

3. Defendant Rubin-Asch

Plaintiff contends that defendant Rubin-Asch failed to provide him adequate treatment because Rubin-Asch gave him only two therapy sessions over several months and did not see plaintiff when he called for Rubin-Asch on three occasions when he was experiencing mental health problems. As to the latter claim, it is undisputed that plaintiff

was seen by *someone* at his cellfront when he asked for services. If it was not Rubin-Asch, it was Dez Neef or Vandenbrook. Plaintiff does not say that he did not receive *any* services on any of these instances, only that *Rubin-Asch* did not come when he was paged.

At any rate, it is undisputed that Rubin-Asch did see plaintiff in therapy sessions, if only twice in ten weeks, and that Rubin-Asch had only limited time available for providing therapy sessions to many prisoners. Although plaintiff suspects that Rubin-Asch could have seen him more often over this time period but instead chose "favorites," he has submitted no evidence to support his suspicions. Because there was a waiting list, the only way for prisoners to receive more frequent treatment was to receive it at cellfront. Plaintiff admits that he refused treatment at his cellfront because he was concerned about privacy.

As defendants point out, it was plaintiff's decision to limit his treatment to the two out-of-cell therapy sessions that Rubin-Asch could provide. Plaintiff avers that he was led to believe he would receive weekly sessions but they were canceled regularly. Even that does not help plaintiff because he could have decided to sacrifice privacy for treatment at his cellfront after any of his sessions were canceled. As it was, plaintiff received cellfront services when he asked for them.

As with Vandenbrook, plaintiff does not have evidence to support his contention that the limited treatment Rubin-Asch provided was constitutionally inadequate. He offers no expert testimony that limited therapy sessions and cellfront attention upon request is a

blatantly inappropriate form of treating the mental health problems he described. No layperson could make such a determination. Thus, once again, plaintiff's claim comes down to a disagreement about the treatment he received. The Eighth Amendment requires more than mere disagreement about the treatment one receives. Edwards, 478 F.3d at 831. Because plaintiff has failed to support his claim that Rubin-Asch provided inadequate mental health treatment to plaintiff, I will grant defendants' motion for summary judgment as to his claim against Rubin-Asch and deny plaintiff's motion.

ORDER

IT IS ORDERED that

1. Plaintiff Chad Goetsch's motion for summary judgment, dkt. #78, is DENIED.

2. The motion for summary judgment filed by defendants Laetitia Ley, Mike Vandenbrook and Scott Rubin-Asch, dkt. #67, is GRANTED.

3. Plaintiff's motion for continuance, dkt. #110, is DENIED as moot.

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

Entered this 30th day of December, 2010.

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