IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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SHAUN MATZ,

ORDER

Plaintiff,

10-cv-668-bbc

v.

MICHAEL VANDENBROOK, KURT SCHWEBKE,
DR. NELSON, SEAN SALTER, LT. LANE,
LINDA FAIT, TRAVIS BITTLEMAN,
C.O. VASOS, C.O B. NEUMAIER,
MICHAEL MEISNER, JANET NICKEL,
BRIAN BENTLION, D. MORGAN,
BYRON BARTOW and TIM DUMA,

Defendants.

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Plaintiff Shaun Matz, a prisoner at the Columbia Correctional Institution, is proceeding with counsel on claims that defendants are violating his rights under the Eighth Amendment by failing to provide adequate treatment for his mental illness. On August 30, 2012, nearly nine months after counsel was appointed to represent plaintiff and six weeks before the deadline for filing dispositive motions, plaintiff filed a motion for a preliminary injunction. Dkt. #56. On September 20, 2012, the same day their response was due, defendants filed a motion for an extension of time on the ground that "defense counsel did not receive an authorization for release of records until September 2, 2012, after repeated requests, and it has been impossible to obtain and analyze Matz's voluminous records in

time to formulate a meaningful response to the plaintiff's motion." Dkt. #65.

Defendants have little excuse for seeking an extension of time; by their own assertion, they received the records they need three days after plaintiff filed his motion. Although it seems to make little sense to seek a preliminary injunction just before the summary judgment deadline, the unusual timing of plaintiff's motion does not change the fact that parties are expected to move quickly to bring a motion for a preliminary injunction to a resolution. Even if the complexity of the case would support a short extension, defendants have no excuse for waiting until the day their response was due to ask for more time. Counsel for defendants is capable and experienced, so he should have known better than to file a last minute motion on such weak grounds.

Although defendants have not shown that they are entitled to more time, I need not wait for defendants to file a response before resolving plaintiff's motion because it is clear from the face of it that plaintiff has not shown that he is entitled to an injunction at this time. "A preliminary injunction is an extraordinary remedy never awarded as of right. In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008) (internal quotation marks and citations omitted). The plaintiff must show he has some likelihood of success on the merits, that he is likely to suffer irreparable harm without an injunction, that the harm he would suffer without the injunction is greater than the harm that preliminary relief would inflict on the defendants and that the injunction is in the public interest. Id. at 20.

Plaintiff has failed to show that he has any likelihood of success at this time. To prevail on a claim under the Eighth Amendment, plaintiff must prove that defendants are aware of a substantial risk of serious harm and are consciously disregarding that risk by failing to take reasonable measures to help him. Farmer v. Brennan, 511 U.S. 825 (1994). With respect to defendants' awareness of a risk, plaintiff points to past instances in which he harmed himself. One potential problem with plaintiff's evidence is that all the incidents he lists are more than three years old. This makes it much more difficult to infer that a substantial risk exists *now* that plaintiff will attempt to harm himself in the near future.

Even if I assume that plaintiff has satisfied the first element, he has not made any showing that defendants are disregarding the risk of harm. In his proposed findings of fact, he makes the conclusory assertions that he "is presently not being treated effectively for [h]is mental illnesses," Plt.'s PFOF ¶ 20, dkt. #57, and that he is a "suicide risk while he is in administrative segregation." Id. at ¶ 5. These proposed findings have multiple flaws First, plaintiff relies solely on expert reports prepared for another case filed in 2008 involving different defendants and a different prison. Plaintiff cannot use those reports to prove that defendants at the Columbia prison are violating his rights. Plaintiff does not cite any evidence regarding the treatment he is or is not receiving now or the reasons for any of defendants' actions or inaction. In fact, plaintiff does not even cite evidence showing that he is in administrative segregation.

A second problem is that plaintiff makes no showing that there are any safe alternatives to a placement in segregation. In fact, plaintiff does not even specify the relief

he is seeking. He asks for "an order requiring that the Defendants permit Matz to be treated satisfactorily for his mental illnesses, and terminating Matz's tenure in administrative segregation." Plt.'s Mot., dkt. #56, at 5. Such a vague request would not satisfy Fed. R. Civ. P. 65(d), which "mandates that every injunction state its terms specifically and describe in reasonable detail the act or acts restrained or required so that the enjoined party is fairly apprised of his responsibilities and the court can objectively assess compliance." Kartman v. State Farm Mutual Automobile Insurance Co., 634 F.3d 883, 892-93 (7th Cir. 2011) (internal quotations omitted). An order requiring defendants to give plaintiff "satisfactory" treatment would not provide defendants any meaningful guidance. In any event, without any showing that defendants could treat plaintiff safely outside of segregation, he cannot prevail on his motion. Scarver v. Litscher, 434 F.3d 972, 976-77 (7th Cir. 2006) (even if defendants were aware that conditions of confinement were exacerbating plaintiff's mental illness, defendants did not violate prisoner's Eighth Amendment rights because his dangerousness left them with no obvious alternative).

I note that plaintiff recently filed a motion to set a new schedule. Dkt. #63. A telephone conference on that motion is scheduled for September 25 before the magistrate judge. Both sides should know that it is unlikely that the magistrate judge will make any significant changes in the remaining deadlines in this case, including the trial date or the deadline for filing dispostive motions.

This case was filed almost two years ago. Both sides agreed to the current schedule more than eight months ago and no grounds for a schedule change are shown in plaintiff's

motion. Particularly because of the serious nature of plaintiff's allegations, further delay is not appropriate. Thus, unless the parties show that extraordinary circumstances exist, they should not expect to receive anything more than a slight adjustment to the schedule.

ORDER

IT IS ORDERED that

1. Plaintiff Shaun Matz's motion for a preliminary injunction, dkt. #56, is DENIED.

2. The motion for an extension of time filed by defendants Michael Vandenbrook, Kurt Schwebke, Dr. Nelson, Sean Salter, Lt. Lane, Linda Fait, Travis Bittleman, C.O. Vasos, B. Neumaier, Michael Meisner, Janet Nickel, Brian Bentlion, D. Morgan, Byron Bartow and Tim Duma, dkt. #65, is DENIED as moot.

Entered this 24th day of September, 2012.

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