

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

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NATANAEL RIVERA,

Plaintiff,

v.

DR. DALIA SULIENE, NURSE STEVE,  
RICK PLOTH, Building Supervisor,  
LORI ALSUM, JANE DOES 1-12, Unit One Managers,  
JOHN DOES 1-12, Unit One Managers,  
JANE DOES 1-12, Medical Action Industries, and  
JOHN DOES 1-12, Medical Action Industries,<sup>1</sup>

Defendants.  
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ORDER

11-cv-89-bbc

On May 30, 2011, I dismissed plaintiff Natanael Rivera's complaint for failure to comply with Fed. R. Civ. P. 8 and 20. Now before the court is plaintiff's proposed amended complaint, in which he contends that defendants at the Columbia Correctional Institution violated his constitutional rights by failing to provide him adequate medical treatment for

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<sup>1</sup> Plaintiff initially filed this case with another prisoner, raising claims against several defendants at the Columbia Correctional Institution. The other prisoner's claims have since been severed into case number 11-cv-425-bbc. I have amended the caption to include only the defendants that plaintiff lists in his amended complaint.

his foot and failing to provide safe conditions that would prevent him from further injuries to his foot. Also, plaintiff contends that employees at the prison and at Medical Action Industries were negligent by providing him defective crutches. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his amended complaint and dismiss any portion that 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. 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). After reviewing the amended complaint, I conclude that plaintiff has failed to state a claim against any defendant for violation of his constitutional rights. Because I am dismissing all of plaintiff's federal claims, I will decline to exercise supplemental jurisdiction over his state law negligence claims.

#### ALLEGATIONS OF FACT

At all times relevant to this case, plaintiff Natanael Rivera was incarcerated at the Columbia Correctional Institution, located in Portage, Wisconsin. On July 1, 2010, plaintiff injured his right foot and ankle during recreation. He was taken in a wheelchair to the

health services unit, where defendant Nurse Steve saw him. Defendant Steve examined plaintiff's foot, wrapped it in an ace bandage and gave plaintiff crutches and pain medication. Plaintiff told defendant Steve that he would like to see a doctor and have an x-ray taken, but defendant Steve told plaintiff that there would be no doctor available to take an x-ray of plaintiff's foot until July 6, 2010. Defendant Steve refused to send plaintiff to the local hospital.

Over the next two days, plaintiff's foot and ankle pain worsened. On July 3, he sent a request to the health services unit, stating that his ankle was in excruciating pain, that he could not put pressure on his foot or ankle and that he needed to see a doctor sometime the next day. On July 6, 2010, a doctor took x-rays of plaintiff's foot and ankle and determined that his foot was broken. Defendant Dr. Suliene put a cast on plaintiff's foot and ankle and gave him pain medication.

Plaintiff continued to use the crutches for at least the next several days, including when he was taking a shower. When signing up for shower times, plaintiff requested that he be allowed to shower first, because his crutches made it difficult for him to walk on slippery floors and the floors became increasingly wet and slippery as more inmates used the showers. In addition, there were no slip resistant mats or strips in the showers. On July 16, however, plaintiff was not the first inmate to shower and the floor was wet and soapy by the time he entered. As he was leaving the shower, his crutch slipped on the wet floor and he

fell, injuring his head, back and legs, and re-injuring his foot and ankle. Plaintiff was taken to the hospital. After he returned, he inspected his crutches and realized that they were mismatched and that the rubber boot on one of them was worn.

On another occasion when plaintiff was using his crutches to walk from the library to his housing unit, he slipped on a wet floor and suffered bruises on his back. Plaintiff wrote a letter to the manufacturer of the crutches, Medical Action Industries, telling them that the crutches he was using were defective. Medical Action Industries did not respond to plaintiff's letter.

## DISCUSSION

### A. Eighth Amendment Medical Care

Plaintiff contends that defendants Nurse Steve and Dr. Suliene violated his rights under the Eighth Amendment by failing to provide him proper medical care for his injured foot and ankle.

Prison officials have a duty under the Eighth Amendment to provide medical care to those being punished by incarceration. Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need.

Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual’s daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996) or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (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).

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

- (1) Did plaintiff need medical treatment?
- (2) Did defendant know that plaintiff needed treatment?
- (3) Despite defendant’s awareness of the need, did defendant fail to take reasonable measures to provide the necessary treatment?

Plaintiff’s alleges that he had a broken foot that caused him severe pain and that defendants Nurse Steve and Dr. Suliene were aware of plaintiff’s injury. Thus, his allegations imply that he had a serious medical need of which defendants were aware. However, accepting all of plaintiff’s allegations as true, the allegations do not permit an

inference that either defendant Steve or defendant Suliene was deliberately indifferent to that need. When plaintiff injured his foot on July 1, 2010, Nurse Steve wrapped it, gave him pain medication and crutches and scheduled him to see a doctor on July 6. Although plaintiff would have preferred to see a doctor sooner, Nurse Steve's actions do not suggest that he was deliberately indifferent to plaintiff's medical needs. Rather, Nurse Steve provided plaintiff immediate treatment and referred him to a doctor. With respect to Dr. Suliene, plaintiff's allegations suggest that she was not aware of his injury until July 6, 2010, at which time she put a cast on his foot and provided him pain medications. Suliene's actions do not imply that she was deliberately indifferent to plaintiff's medical needs. Finally, although plaintiff alleges that he wrote a letter to the health services unit on July 3, 2010, stating that he was in excruciating pain and requesting that he be seen by a doctor on July 4 rather than July 6, plaintiff does not allege that either defendant Steve or defendant Suliene saw plaintiff's letter. Thus, these defendants cannot be held responsible for failing to provide care to plaintiff during this time.

In sum, although plaintiff had a serious medical need, I cannot infer from plaintiff's allegations that either Nurse Steve or Dr. Suliene failed to take reasonable measures to address his need. Therefore, he may not proceed on his Eighth Amendment claim against these defendants.

## B. Conditions of Confinement

Plaintiff contends that the defendant Rick Ploth, the building supervisor at the Columbia Correctional Institution, and defendants John and Jane Does, unit managers in housing unit one, violated his rights under the Eighth Amendment by maintaining unsafe conditions in the showers and hallways that caused plaintiff to fall and suffer serious injuries.

The Eighth Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Sain v. Wood, 512 F.3d 886, 893 (7th Cir. 2008). To demonstrate that prison conditions violated the Eighth Amendment, plaintiff must allege that the conditions were sufficiently serious so that they denied him “the minimal civilized measure of life’s necessities,” Farmer, 511 U.S. at 834, or “exceeded contemporary bounds of decency of a mature, civilized society.” Lunsford v. Bennet, 17 F.3d 1574, 1579 (7th Cir. 1994). This means that the conditions of the cell must create a substantial risk of serious harm, Farmer, 511 U.S. at 847, or at the very least, the conditions must deprive plaintiff of some “identifiable human need such as food, warmth, or exercise,” Wilson v. Seiter, 501 U.S. 294, 304 (1991).

In addition, a plaintiff must allege that the defendants acted with deliberate indifference to a risk of serious harm to plaintiff. Lunsford, 17 F.3d at 1579. As explained above, “deliberate indifference” means that defendants knew that plaintiff faced a substantial

risk of serious harm and yet disregarded that risk by failing to take reasonable measures to address it. Farmer, 511 U.S. at 847.

Plaintiff alleges that the showers and hallways did not have slip resistant mats to prevent prisoners, and those prisoners who were injured or using crutches in particular, from falling and receiving further injuries. He contends that defendants Ploth and the unit managers are responsible for the safety of the prison and that they should be held responsible for the injuries he received when he slipped and fell in the showers and hallway.

Although it is unfortunate that plaintiff slipped and fell, his allegations do not permit an inference that the conditions in the showers and hallways were so harsh or dangerous that they would give rise to a constitutional claim. Nor do plaintiff's allegations suggest that defendants Ploth or the unit managers were aware that plaintiff suffered from a "substantial" risk of serious harm. Even plaintiff appears to acknowledge that defendants were not "deliberately indifferent" to a serious risk of harm, contending repeatedly in his complaint that their failure to place slip resistant mats in the showers was "negligent." However, a defendant's negligent actions do not give rise to a constitutional claim. Therefore, plaintiff may not proceed with his Eighth Amendment claims against these defendants.

### C. State Law Claims

Plaintiff raises state law negligence claims in his amended complaint, including claims

that defendant Nurse Steve was negligent in providing him with defective crutches and that Medical Action Industries was negligent in manufacturing defective crutches. However, because I am dismissing all of plaintiff's federal claims, I will decline to exercise supplemental jurisdiction over his state law negligence claims. 28 U.S.C. § 1367(c)(3) (federal district court may decline to exercise supplemental jurisdiction over state law claims once federal claims have been dismissed). Therefore, I will dismiss plaintiff's state law claims.

#### D. Defendant Alsum

Plaintiff listed defendant Alsum as a defendant in his complaint, but includes no allegations in his complaint concerning her involvement in any of the events relevant to his claims. In fact, he includes no allegations regarding defendant Alsum at all. Therefore, she will be dismissed from the case.

#### ORDER

IT IS ORDERED that

1. Plaintiff Natanael Rivera is DENIED leave to proceed on his claims that defendants Nurse Steve, Dr. Suliene, Rick Ploth and the Unit One Managers violated his rights under the Eighth Amendment. Plaintiff is also denied leave to proceed on his claims against defendant Lori Alsum.

2. The court declines to exercise jurisdiction over plaintiff's state law claims against defendant Nurse Steve and the employees of Medical Action Industries.

3. The clerk of court is directed to close this case.

Entered this 27<sup>th</sup> day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge