

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

ERIK McDONALD, Jr.,

Plaintiff,

v.

MATTHEW GRANT,

Defendant.

OPINION AND ORDER

11-cv-113-slc¹

This is a proposed civil action in which plaintiff Erik McDonald alleges that defendant Matthew Grant violated his Eighth Amendment rights by using excessive force on him. McDonald has filed a motion to amend his complaint, together with a proposed amended complaint. The court will grant his motion and consider the amended complaint as the operative pleading in this case.

McDonald asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit McDonald has provided, the court concludes that he is unable to prepay the full fee for filing this lawsuit. McDonald has made the initial partial payment of \$7.18 required of him under § 1915(b)(1). The next step is determining whether McDonald's proposed action is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because McDonald meets this step as well, he will be allowed to proceed and the state required to respond.

¹For the purpose of issuing this order, Judge William M. Conley acts for the court.

ALLEGATIONS OF FACT

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). In his amended complaint, McDonald alleges, and the Court assumes for purposes of this screening order, the following facts.

- Plaintiff Erik McDonald Jr., is an inmate at the Wisconsin Secure Program Facility, located in Boscobel, Wisconsin, but was previously incarcerated at the Columbia Correctional Institution located in Portage, Wisconsin.
- Defendant Matthew Grant is a correctional officer at the Columbia Correctional Institution.
- On November 7, 2010, defendant Grant slammed McDonald's hand in a door trap, causing injury to his hand. His left middle finger and left wrist were cut. A picture of McDonald's hand was taken after it had stopped bleeding.
- McDonald still experiences persistent pain, random spasms, muscle cramps and a constant stinging sensation in his left hand.
- McDonald alleges that Grant inflicted this injury with the intent to cause him harm.

OPINION

McDonald claims that defendant Grant violated his Eighth Amendment rights when he used excessive force and injured his hand. In the context of prison, excessive force claims arise under the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312 (1986), and *Hudson v. McMillian*, 503 U.S. 1 (1992). 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). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. *Whitley*, 475 U.S. at 321; *Outlaw v. Newkirk*, 259 F.3d 833, 837 (7th Cir. 2001). In *Hudson*, 503 U.S. at 9-10, the Court explained that while the extent of injury inflicted was one factor to be considered, the absence of a significant injury did not bar a claim for excessive force so long as the officers used more than minimally necessary amount of force.

Here, McDonald alleges that Grant intentionally slammed his hand in the door trap causing him substantial harm. At this early stage of the proceedings, plaintiff’s allegations are sufficient to state a claim of excessive force under the Eighth Amendment against defendant Grant. McDonald should be aware, however, that to be successful on this claim he will have to prove that Grant slammed his hand in the door trap maliciously and sadistically to cause him harm, and not merely negligently, nor even in an ill-conceived, intentional effort to maintain discipline.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Erik McDonald's motion to amend his complaint is GRANTED.
- (2) Plaintiff's request to proceed on his claims that defendant Matthew Grant violated his Eighth Amendment rights is GRANTED.
- (3) For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.
- (4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- (6) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 4th day of August, 2011.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge