

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

---

LARRY COCHRAN,

Plaintiff,

v.

JAMES GEIT, STEVE DUTTON,  
STEVE ROBINSON, DERRICK ROGER  
and CAROL HOLINKA,

Defendants.

---

OPINION and ORDER

11-cv-134-wmc

In this *Bivens* lawsuit<sup>1</sup>, plaintiff Larry Cochran, a prisoner at the Terre Haute Federal Correctional Institution, alleges that while he was confined at the Oxford Correctional Institution, prison officials were deliberately indifferent to the danger he faced climbing into the top bunk in his cell without a ladder, which led to a fall and severe injury. In an order entered on July 26, 2011, I noted that he had struck out under 28 U.S.C. § 1915(g) and, therefore, was disqualified from proceeding *in forma pauperis* on claims other than those containing allegations that he is in imminent danger of serious physical harm. Dkt. 15. After reviewing his proposed complaint, I concluded that plaintiff's allegations met the imminent danger standard and indicated that his complaint would be screened after he made an initial partial payment of the filing fee required by this court under § 1915(b)(1). Plaintiff has made that payment.

The next step is determining whether plaintiff'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). In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v.*

---

<sup>1</sup> *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971)

*Kerner*, 404 U.S. 519, 521 (1972). Plaintiff's allegations of fact are set forth in the July 26, 2011 order, and are incorporated by reference in this order.

The Eighth Amendment to the United States Constitution requires the government to “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 48 U.S. 517, 526-27). When prison officials are aware of a substantial risk of harm, they must take reasonable steps to prevent that harm. *Borello v. Allison*, 446 F.3d 742, 747 (7<sup>th</sup> Cir. 2006); *Woodward v. Correctional Medical Services*, 368 F.3d 917, 928 (7<sup>th</sup> Cir. 2004); *Peate v. McCann*, 294 F.3d 879, 882 (7<sup>th</sup> Cir. 2002); *Sanville v. McCaughtry*, 266 F.3d 724, 737 (7<sup>th</sup> Cir. 2001); *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 258 (7<sup>th</sup> Cir. 1996). Failure to do so constitutes deliberate indifference and violates an inmates's Eighth Amendment rights. *Cavalieri v. Shepard*, 321 F.3d 616, 622-23 (7<sup>th</sup> Cir. 2003) (prison officials have duty to protect prisoners from harming themselves); *Sanville*, 266 F.3d at 734. To state a claim under this standard, plaintiff must allege facts sufficient to allow a plausible inference that (1) defendants knew that there was a “substantial risk” that plaintiff would harm himself; and (2) disregarded that risk by failing to take reasonable measures to abate it. *Farmer*, 511 U.S. at 844; *Cavalieri*, 321 F.3d at 621-22. Under the facts alleged in the complaint, I find that plaintiff has stated a claim upon which relief may be granted against all of the named defendants.

## ORDER

It is ORDERED that:

- (1) Plaintiff Larry Cochran is GRANTED leave to proceed on his claim that defendants James Geit, Steve Dutton, Steve Robinson, Derrick Roger and Carol Holinka were deliberately indifferent to the danger he

faced climbing into the top bunk in his cell without a ladder, which led to a fall and severe injury.

- (2) For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer that will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents petitioner submits that do not show on the court's copy that he has sent a copy to defendants or defendants' attorney.
- (3) Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (4) 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.
- (5) Copies of plaintiff's complaint, the court's July 26, 2011 order and this order are being sent today to the United States Marshal for service on defendants.

Entered this 16<sup>th</sup> day of October, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge