

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

PARKER OSTRANDER,

Plaintiff,

v.

DOCTOR HEIDOR,

Defendant.

OPINION AND ORDER

11-cv-228-slc¹

Plaintiff Parker Ostrander has filed a proposed amended complaint in response to this court's April 26, 2011 order in which I screened his original complaint under 28 U.S.C. §§ 1915 and 1915A. Both complaints focus on plaintiff's back condition, which ultimately was revealed to be cancer. In the April 26 order, I allowed plaintiff to proceed on a claim that defendant Heidor, a doctor at the prison where plaintiff was incarcerated, violated plaintiff's right to medical care under the Eighth Amendment by failing to diagnose the disease. (A doctor at the Marshfield Clinic later discovered a tumor on plaintiff's spine.) However, I dismissed the complaint as to various other named and unnamed defendants because

¹ I am exercising jurisdiction over this case for the purpose of this order.

plaintiff did not include enough information about how they may have violated his rights. Plaintiff's amended complaint includes additional allegations about some of the other defendants' actions.

Having reviewed plaintiff's amended complaint, I conclude that he states a claim upon which relief may be granted with respect to the following claims under the Eighth Amendment:

- defendant Heidor disregarded plaintiff's pain and other symptoms and failed to investigate their cause;
- an unnamed sergeant at the Dodge Correctional Institution forced plaintiff to sleep on a top bunk, even though he knew that plaintiff suffered from severe back pain and had a medical restriction to sleep on the bottom bunk; because he was forced to sleep on the top bunk, he fell from the bunk, fractured his spine and suffered permanent nerve damage;
- an unnamed nurse at the Dodge Correctional Institution refused to provide him treatment after he fell off the bunk;
- multiple unnamed officers at the Dodge Correctional Institution refused to call an ambulance or otherwise help him and aggravated his condition by forcing him to walk up stairs without assistance.

At this early stage, it is reasonable to infer that these defendants knew that plaintiff had a serious medical need and failed to respond reasonably. Hayes v. Snyder, 546 F.3d 516, 522 (7th Cir. 2008). However, I remind plaintiff that he will have to come forward with specific evidence of each defendant's alleged unconstitutional conduct at summary

judgment or trial.

Although plaintiff identifies only one defendant by name, that is not a reason to dismiss the claims. “[W]hen the substance of a pro se civil rights complaint indicates the existence of claims against individual officials not named in the caption of the complaint, the district court must provide the plaintiff with an opportunity to amend the complaint.” Donald v. Cook County Sheriff's Dept., 95 F.3d 548, 555 (7th Cir. 1996). Until plaintiff has the opportunity to obtain discovery on the identity of the unnamed defendants, I will allow him to proceed against Jim Schwochert, who is the warden of the Dodge Correctional Institution. Duncan v. Duckworth, 644 F.2d 653, 655-56 (7th Cir. 1981) (if prisoner does not know name of defendant, court may allow him to proceed against administrator for purpose of determining defendants' identity). Early on in this lawsuit, Magistrate Judge Stephen Crocker will hold a preliminary pretrial conference. At the time of the conference, the magistrate judge will discuss with the parties the most efficient way to obtain identification of the unnamed respondents and will set a deadline within which plaintiff is to amend his complaint to include the unnamed defendants.

At the end of his complaint, plaintiff includes a request for appointment of counsel. The Court of Appeals for the Seventh Circuit has held that before a district court can consider such motions, it must first find that the plaintiff made reasonable efforts to find a lawyer on his own and was unsuccessful or was prevented from making such efforts. Jackson

v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers who he asked to represent him in this case and who turned him down. Because plaintiff has not complied with that requirement, his motion will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff Parker Ostrander's motion for leave to amend his complaint, dkt. #7, is GRANTED.

2. Plaintiff is GRANTED leave to proceed on the following claims:

(a) defendant Heidor disregarded plaintiff's pain and other symptoms and failed to investigate their cause, in violation of the Eighth Amendment;

(b) an unnamed sergeant at the Dodge Correctional Institution forced plaintiff to sleep on a top bunk, even though he knew that plaintiff suffered from severe back pain and had a medical restriction to sleep on the bottom bunk; as a result, plaintiff fell from the bunk, fractured his spine and suffered permanent nerve damages, in violation of the Eighth Amendment;

(c) an unnamed nurse at the Dodge Correctional Institution refused to provide plaintiff treatment after he fell from the bunk, in violation of the Eighth Amendment;

(d) multiple unnamed officers at the Dodge Correctional Institution refused to call an ambulance or otherwise help plaintiff and aggravated his condition by forcing him to walk up stairs without assistance, in violation of the Eighth Amendment.

3. Plaintiff may proceed against Jim Schwochert, warden of the Dodge Correctional Institution, to allow plaintiff to discover the identities of the unnamed defendants.

4. Plaintiff's motion for appointment of counsel is DENIED as premature.

5. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on 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 the department accepts service on behalf of defendants.

Entered this 18th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge