IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RAYMOND K. HEDGESPETH, JR.,

Plaintiff,

v.

ORDER

11-cv-76-slc[1]

THE STATE OF WISCONSIN and
WISCONSIN DEPARTMENT OF HEALTH SERVICES,

Defendants.

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This is a proposed civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983 and Wis. Stat. § 51.61. Plaintiff Raymond Hedgespeth is detained at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin pursuant to a civil commitment order under Wisconsin's Sexually Violent Persons Law, Wis. Stat. ch. 980. He contends that defendants violated his constitutional rights by subjecting him to unnecessary strip searches. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Plaintiff's status as a chapter 980 patient means that he is not subject to the

[1] For the purpose of this order, I am assuming jurisdiction over this case.

restrictions on prisoner litigation in the Prison Litigation Reform Act. However, because plaintiff is proceeding in forma pauperis, I must screen his complaint and dismiss it if it 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. § 1915(e)(2)(B). After reviewing the complaint, I conclude that plaintiff has failed to state a claim upon which relief may be granted. Therefore, I will dismiss his complaint.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

On five occasions in 2010, plaintiff Raymond Hedgespeth Jr. was transported from the Sand Ridge Secure Treatment Center to the hospital in Mauston, Wisconsin. On each occasion, he was escorted from his room, photographed and taken to the "gatehouse" to be searched. In the gatehouse, plaintiff was taken to a strip cage room where he removed his clothes and passed them through the trap door. While he was unclothed, an officer asked plaintiff to run his fingers through his hair and turn his ears forward so the officer could check behind them. Then, the officer asked plaintiff to lift his arms, turn around, bend over and spread his buttocks. Finally, the officer asked plaintiff to lift his feet, turn back around and lift his penis. After the search, plaintiff was given his socks, shoes, underwear, prison pants and a prison shirt. He put his hands through the trap door and was handcuffed. After

the door was opened, plaintiff was shackled at the ankles, was "belly-belted" and "black-boxed" and was transported to the hospital in a van. While he was at the hospital, two officers were with plaintiff at all times. When he returned from the hospital, he was strip-searched and examined again by an officer before returning to his room.

DISCUSSION

As an initial matter, plaintiff cannot sue the State of Wisconsin or the Department of Health Services under 42 U.S.C. § 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 65-71 (1989) (states and state agencies are not "persons" who may be sued for constitutional violations under § 1983). However, even if plaintiff had named a proper defendant, I would dismiss his complaint for failure to state a claim upon which relief may be granted.

Plaintiff contends that defendants violated his constitutional rights by subjecting him to a strip search after he returned from the hospital. In particular, he contends that because he was searched before leaving the Sand Ridge Secure Treatment Center and was under continuous escort until he returned, it was unreasonable to enforce the strip search policy and conduct the second search because there was no possibility that he could have obtained and concealed contraband. Plaintiff contends that the strip search amounted to unlawful punishment in violation of the Fourteenth Amendment and a violation of privacy rights

under the Fourth Amendment.

Because plaintiff is a civilly committed patient and not a prisoner, he may not be "punished," and is "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982). That does not mean, however, that he is entitled under the constitution for be free from all forms of regulation or that he is exempt from "conditions that advance goals such as preventing escape and assuring the safety of others." Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003); Thielman v. Leean, 282 F.3d 478, 483-84 (7th Cir. 2002) ("facilities dealing with those who have been involuntarily committed for sexual disorders are 'volatile' environments whose day-to-day operations cannot be managed from on high"). Cf., Bell v. Wolfish, 441 U.S. 530, 537 (1979) ("This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may.").

Additionally, like the privacy rights of prisoners and pretrial detainees, the privacy rights of civilly committed patients are severely curtailed by the fact of their detention and the security concerns inherent in operating a secure treatment facility. Thielman, 282 F.3d at 483-84 ("even though [a 980 patient] is not formally a prisoner, his confinement has deprived him (legally) of a substantial measure of his physical liberty"); see also Bell, 441 U.S. at 555-56 ("given the realities of institutional confinement, any reasonable expectation

of privacy that a detainee retained necessarily would be of a diminished scope"); Hudson v. Palmer, 468 U.S. 517, 527 (1984) (prisoner's privacy rights are severely curtailed and prison officials have great discretion in determining when and what kind of search is appropriate).

Civilly committed patients may be subjected to routine searches, so long as the searches do not amount to punishment and are reasonable in light of "the need for the particular search" and the "invasion of personal rights that the search entails." Bell, 441 U.S. at 559; see also Whitman v. Nesic, 368 F.3d 931, 934 (7th Cir. 2004) (searches of prisoner's body that are "totally without penological justification are considered unconstitutional") (internal quotation omitted). In determining whether a search is punitive, the critical question is "whether the [search] is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose." Bell, 441 U.S. at 538. Such legitimate purposes include the effective management of a detention facility and the maintenance of security and order. Id. at 540.

With respect to strip searches, the institution officials do not need particularized suspicion of wrongdoing for the search to be upheld as constitutional. Bell, 411 U.S. at 559; Peckham v. Wisconsin Dept. of Corrections, 141 F.3d 694, 695 (7th Cir. 1998) (upholding various routine strip searches of prisoners, including those that occur "whenever a prisoner first arrives at the jail from another facility, whenever a prisoner returns to the jail from a visit with a doctor or from court, whenever a prisoner finishes a contact visit with a

nonprisoner, and whenever prison officials undertake a general search of a cell block"). Rather, the court of appeals has stated that the question is whether the strip search was "conducted in a harassing manner intended to humiliate and inflict psychological pain." Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003); Mays v. Springborn, 575 F.3d 643, 649 (7th Cir. 2009 (to prevail on strip search claim, plaintiff must "show that the searches were conducted in a harassing manner intended to humiliate and cause psychological pain."); Fillmore v. Page, 358 F.3d 496, 505 (7th Cir. 2004). Thus, so long as the officers searched plaintiff for the purpose of finding contraband or for another legitimate purpose, the search is not unconstitutional simply because the prisoner believes that officials had no reason to suspect that he was hiding anything.

Applying these standards, I conclude that plaintiff has failed to state a claim upon which relief may be granted. Plaintiff is challenging searches that occurred after he had left the institution and had contact with people outside the institution. It is reasonable for institution officials to believe that there is a possibility that patients may obtain contraband when they are transported between the institution and the hospital and to enact a general strip search policy in such circumstances. Moreover, accepting all of plaintiff's allegations as true, there is nothing about the searches or the manner in which they were conducted that suggests they were conducted to punish, harass or humiliate plaintiff. The searches were routine and were conducted in a discreet and expeditious manner, out of view of other

patients. In sum, the searches were imposed incident to a "legitimate government purpose," rather than to punish plaintiff; they did not violate any of his constitutional rights. Therefore I will dismiss plaintiff's constitutional claims. In addition, I will decline to exercise supplemental jurisdiction over his state law claims. If plaintiff wishes to pursue these claims, he must do so in state court.

ORDER

IT IS ORDERED that plaintiff Raymond K. Hedgespeth Jr. is DENIED leave to proceed on his claim that defendants State of Wisconsin and Department of Health Services subjected him to strip searches that violated the United States Constitution and state law. The clerk of court is directed to close this case.

Entered this 17th day of March, 2011.

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