IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIE SIMPSON,

ORDER

Plaintiff,

11-cv-851-bbc

v.

TIMOTHY HAINES,

Defendant.

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Plaintiff Willie Simpson was originally granted leave to proceed on several claims against over 20 defendants regarding his exposure to toxic chemicals in his cell. However, as discussed in an October 18, 2012 order, the parties stipulated to plaintiff's voluntary dismissal of all of the defendants in the case at that time except Warden Timothy Haines. Presently pending before the court is a document filed by plaintiff, which he says is a motion under Fed. R. Civ. P. 59, but which I understand to be a motion for reconsideration of the court's August 2, 2012 screening order.

In his motion, plaintiff argues that he should have been allowed to proceed on a due process "state-created danger" claim, but it is unclear which defendants he believes should be the subjects of this claim. The motion predates his request for voluntary dismissal of all defendants present in the case after screening (with the exception of Haines). Therefore, there is no reason to consider the defendants that plaintiff subsequently chose to dismiss.

Rather, I understand plaintiff to be attempting to bring this claim regarding defendants that were dismissed at the screening stage; in his motion, plaintiff seems to identify defendants Scott Walker, J.B. Van Hollen, Abigail Potts and Grant County as defendants on this claim. Unfortunately for plaintiff, the "state-created danger" doctrine does not apply to this case because that doctrine exists as an exception to the proposition that the due process clause "generally does not impose upon the state a duty to protect individuals from harm by *private actors*." Buchanan–Moore v. County of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009) (emphasis added). In this case, plaintiff is alleging that prison staff, rather than private actors, pumped chemicals into his cell. As discussed above, plaintiff was allowed to proceed against the prison officials who allegedly exposed plaintiff to these chemicals, but he has chosen to dismiss all of those defendants other than Warden Haines.

Even if the state-created danger doctrine could apply to the events described in plaintiff's complaint, I have already concluded that plaintiff fails to raise plausible allegations suggesting that defendants Walker, Van Hollen or Potts could be liable for the harm to plaintiff. In the August 2, 2012 screening order, I concluded that plaintiff's allegations that these defendants were involved in a conspiracy to harm him were "fantastical" and that defendants "did not have the duty of resolving what amounts to an inmate grievance or criminal matter." Dkt. #39. Similarly, plaintiff cannot sustain a claim against defendant Grant County because, at best, he alleges that county officials failed to investigate battery charges against prison staff. Such a failure to act was neither an "affirmative act" triggering liability nor a proximate cause of plaintiff's alleged injuries. King ex rel. King v. East St.

Louis School District 189, 496 F.3d 812, 817-18 (7th Cir. 2007) (liability under state-created danger theory requires "affirmative act" that is proximate cause of plaintiff's injury).

Plaintiff asserts also in his motion for reconsideration that he should have been allowed to proceed against defendants Walker, Van Hollen and Potts in their official capacity "under the longstanding doctrine of Ex parte Young" to "enjoin prospective action." While plaintiff is correct that the Ex parte Young doctrine "allows private parties to sue individual state officials for prospective relief to enjoin ongoing violations of federal law." MCI Telecommunications Corp. v. Illinois Bell Telephone Co., 222 F.3d 323, 337 (7th Cir. 2000), there is no reason for these particular persons to be named as defendants in this case at this point. Having Warden Haines listed as a defendant should suffice to effectuate the injunctive relief requested by plaintiff.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the court's August 2, 2012 screening order in this case, dkt. #42, is DENIED.

Entered this 27th day of November, 2012.

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