IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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BRIAN KEITH FORSHEE,

Plaintiff,

v.

SHERIFF DAVID MAHONEY
and DANE COUNTY JAIL,

Defendants.

OPINION AND ORDER

12-cv-152-slc[1]

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Pro se plaintiff Brian Keith Forshee has filed a supplement to his complaint in an attempt to fix the problems identified by the court in an order dated May 9, 2012. In his original complaint, plaintiff alleged that staff at the Dane County jail were refusing to provide any treatment for his attention deficit hyperactivity disorder. I noted that, under some circumstances, refusing to treat attention deficit disorder could satisfy the standard for an Eighth Amendment violation, which is whether the defendant knew that the plaintiff had a serious medical need, but disregarded that need by refusing to take reasonable measures to provide treatment. Ciarpaglini v. Saini, 352 F.3d 328, 331 (7th Cir. 2003); Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997). However, I could not allow plaintiff to proceed on his claim because he failed to name as defendants anyone who was personally involved

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

in that decision. Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise.").

In his supplement, he identifies four defendants: Dennis Brightwell, L. Masker, Sarah Kowalski and Mark Twombly. He alleges that Brightwell, Masker and Kowalski are medical staff who have refused to provide any treatment, which has caused him "daily suffering." With respect to defendant Twombly, plaintiff alleges that he denied grievances that plaintiff filed regarding the lack of treatment he was receiving. Although plaintiff's allegations could be more detailed, I conclude that they are enough at this early stage to give defendants fair notice of his claim.

At summary judgment or trial plaintiff will have to come forward with specific evidence proving each element of his claim. First, he will have to show that he suffered from a "serious medical need," which is a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). A diagnosis of attention deficit hyperactivity disorder may not be sufficient by itself to show a serious medical need. Rather, plaintiff will need to show that his condition "significantly affects [his] daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or otherwise subjects him to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994).

Second, plaintiff will have to show that each defendant *knew* that he had a serious

medical need. It will not be enough for plaintiff to show that a reasonable person would have known of the need or that defendants "should have" known about it. Farmer v. Brennan, 511 U.S. 825, 843 n.8.

Third, plaintiff will have to show that defendants consciously disregarded his serious medical need by failing to take reasonable measures to treat it. Id. at 842. It will not be enough to show that defendants failed to provide the best treatment or made a mistake. Rather, plaintiff must show that defendants' decisions were such a substantial departure from accepted professional judgment, practice or standards as to demonstrate a complete abandonment of medical judgment. Greeno v. Daley, 414 F.3d 645, 653-54 (7th Cir. 2005).

With respect to defendant Twombly, if he denied plaintiff's grievance because he was relying on the medical judgment of the other defendants or another medical professional, plaintiff will not be able to prevail against him unless plaintiff can show that it was obvious to Twombly that plaintiff was not receiving needed care. Berry v. Peterman, 604 F.3d 435, 440-41 (7th Cir. 2010); Hayes v. Snyder, 546 F.3d 516, 526-28 (7th Cir. 2008).

ORDER

IT IS ORDERED that

1. Plaintiff Brian Keith Forshee is GRANTED leave to proceed on his claim that Dennis Brightwell, L. Masker, Sarah Kowalski and Mark Twombly refused to provide him treatment for his attention deficit hyperactivity disorder, in violation of the Eighth

Amendment.

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 who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to 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 their documents.

4. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

5. A copy of the complaint, dkt. #1, the supplement to the complaint, dkt. #8, the order dated May 9, 2012, dkt. #7, this order, summons for defendants and United States Marshal service forms will be forwarded to the United States Marshal for service on defendants. Plaintiff should not attempt to serve defendants on his own.

Entered this 14th day of June, 2012.

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