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

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CARL BARRETT,

OPINION AND ORDER

Plaintiff,

12-cv-24-bbc

v.

LAVERNE WALLACE, SHAWN GALLINGER, DONALD HANDS, KEVIN KALLAS, RICK RAEMISCH, PETER HUIBREGTSE, LYNDA SCHWANDT, CRAIG TOM, MICHAEL HANFELD, SCOTT RUEBIN-ASH, STACEY HOEM, WILLIAM BROWN and LEBBEUS BROWN,[1]

Defendants.

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In an order entered August 24, 2012, I granted plaintiff Carl Barrett leave to proceed on his claims that the defendants violated his rights under the Eighth Amendment, but dismissed his Eighth Amendment claims against defendants Rick Raemisch and Peter Huibregtse in their personal capacity and his claim under the Americans with Disabilities Act. Plaintiff has filed a motion to supplement his complaint, dkt. #38, in an attempt to revive the dismissed claims.

Because plaintiff is an inmate, the Prison Litigation Reform Act requires the court to screen plaintiff's supplement and dismiss any claim that is frivolous, malicious, fails to state

[1] I have corrected the caption to reflect accurately the defendants' names as listed in their answer. Dkt. # 36.

a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After reviewing the supplement, I find that plaintiff's additional allegations are not sufficient to state a claim against defendants Raemisch and Huibregtse in their personal capacity or to state a claim under the ADA. Because the proposed amendments are futile, I will deny his motion to amend the complaint under Fed. R. Civ. P. 15(a)(2).

First, the conclusory facts about defendants Raemisch and Huibregtse in the supplement are insufficient to meet the notice pleading requirements of Fed. R. Civ. P. 8. Rule 8(a)(2) requires a complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief," which means the complaint must include enough allegations of fact to make a claim for relief plausible on its face. Aschcroft v. Iqbal, 555 U.S. 662, 678-79 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)). The primary purpose of these rules is rooted in fair notice. A complaint "must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is." Vicom, Inc. v. Harbridge Merchant Services, Inc., 20 F.3d 771, 775 (7th Cir. 1994).

Plaintiff alleges that he complained to defendants Raemisch and Huibregtse personally about "the abuses he was suffering at the hands of the other defendants;" their mental health treatment policies; and his lack of inadequate treatment. He further alleges that they had an obligation to ensure he received treatment, could have ensured he received treatment and yet they chose not to do so. Plaintiff does not identify when he complained

to Raemisch and Huibregtse or what he told them about the abuse or the policies. In his second amended complaint, plaintiff alleges that numerous defendants failed to protect him from self-harm and used excessive force against him. Defendants would be required to guess which of these violations he complained about and which are ones that defendants are responsible for failing to prevent. Similarly, it is not possible to determine which allegedly unconstitutional policies he alleges that they failed to correct.

Second, plaintiff has filed to state a claim under the ADA in the supplement for the same reason he failed to state a claim in his second amended complaint. Plaintiff repeats his allegation that he was denied mental health treatment at a mental health facility, rather than at supermax segregation unit. As I explained in the previous order, the ADA is an anti-discrimination statute and plaintiff has not claimed that he was denied access to this facility because of his mental health problems. Rather, plaintiff's claim is that he received inadequate treatment. A prison does not violate the ADA by "simply failing to attend to the medical needs of its disabled prisoners." Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996).

Because plaintiff's supplemental claims would not survive screening, I will deny his motion to supplement. Foster v. DeLuca, 545 F.3d 582, 584 (7th Cir. 2008) ("[A] district court may deny a motion to amend if the proposed amendment fails to cure the deficiencies in the original pleading, or could not survive a second motion to dismiss.") (internal quotations omitted).

ORDER

IT IS ORDERED THAT plaintiff's motion to supplement his complaint, dkt. #38, is DENIED.

Entered this 11th day of December, 2012.

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