

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

MICHAEL B. KINGSLEY,

Plaintiff,

v.

MONROE COUNTY SHERIFF'S DEPARTMENT,
ROBERT CONROY, STAN HENDRICKSON,
WISCONSIN DEPARTMENT OF CORRECTIONS
and NATE WHITE,

Defendants.

ORDER

12-cv-336-bbc

In this proposed civil action for monetary and injunctive relief, plaintiff Michael B. Kingsley contends that defendants Robert Conroy, Stan Hendrickson, Nate White, the Monroe County Sheriff's Department and the Wisconsin Department of Corrections violated his rights under the Constitution and state law by failing to protect him from injury caused by inadequate lighting in the showers at the Monroe County jail. Plaintiff is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that 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. § 1915A. In

addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). After reviewing the complaint, I conclude that plaintiff has failed to state a claim for violation of his constitutional rights. Therefore, I am dismissing his constitutional claim and declining to exercise jurisdiction over plaintiff's state law claims.

DISCUSSION

In his complaint, plaintiff alleges that the showers at the Monroe County jail do not have lights inside the stalls. On July 24, 2011, plaintiff fell while he was taking a shower and chipped his front teeth. Prior to this occurrence, one other inmate had fallen in the showers and plaintiff had complained to defendant Stan Hendrickson and Robert Conroy, lieutenants at the jail, and defendant Nate White, a state inspector, about the lack of lighting in the showers. The defendants had either failed to respond or failed to take any action to address the lighting problem. Plaintiff contends that defendants' failure to protect him from falling in the shower by installing adequate lighting in the stalls constitutes a violation of his rights under the Constitution and state law.

Because plaintiff was a pretrial detainee at the time of the incident, his constitutional claim falls under the Fourteenth Amendment's due process guarantee rather than the Eighth Amendment's protection from cruel and unusual punishment. Forrest v. Prine, 620 F.3d 739, 743-44 (7th Cir. 2010). The Fourteenth Amendment provides at least as much protection as the Eighth Amendment standards and thus, it is appropriate to borrow the

Eighth Amendment standard to determine whether a pretrial detainee has stated a claim for failure to protect from a risk of serious harm. Id.

Prisoners can state a claim under the Eighth Amendment by alleging facts suggesting that prison officials knowingly disregarded a substantial risk of serious harm to the prisoner. Farmer v. Brennan, 511 U.S. 825, 837 (1994). This means that the plaintiff must allege facts supporting an inference that defendants were personally aware of facts from which an inference could be drawn that the unlit showers posed a substantial risk of serious harm and that defendants actually drew that inference. Id.

In this case, plaintiff's allegations are not sufficient to show that he faced a substantial risk of serious harm. It is general knowledge that shower floors are slippery when wet and that a slippery floor presents a risk that someone may slip and fall. The question is whether a slippery shower floor, in combination with poorly lit shower stalls, presents "an *excessive* risk to inmate health or safety." Farmer, 511 U.S. at 837 (emphasis added).

Several courts have concluded that "slippery floors," by themselves, do not pose a significant risk of serious harm to a prisoner's health or safety because slippery floors constitute a risk faced by members of the public at large and the possibility of falling on them does not constitute a substantial risk of serious harm. E.g., Reynolds v. Powell, 370 F.3d 1028, 1031 (10th Cir. 2004) ("[S]lippery floors constitute a daily risk faced by members of the public at large. . . . [T]here is nothing special or unique about plaintiff's situation that will permit him to constitutionalize what is otherwise only a state-law tort claim.") (internal quotations omitted); LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir.

1993) (holding that requiring prisoner to shower in handcuffs and shackles “[did not] create[] a sufficiently unsafe condition . . . [because] [e]ven if the floors of the showers are slippery and [the prisoner] might fall while showering, ‘slippery prison floors . . . do not state even an arguable claim for cruel and unusual punishment.’”) (citation omitted); Noble v. Grimes, 350 Fed. Appx. 892, *1 (5th Cir. 2009) (unpublished) (dismissing prisoner’s claim related to slip and fall in prison shower area); Smith v. Leonard, 242 Fed. Appx. 139, *1 (5th Cir. 2007) (unpublished) (same); Bell v. Ward, 88 Fed. Appx. 125, 126-27 (7th Cir. 2004) (unpublished) (affirming dismissal of prisoner’s slip and fall claim and noting that “although wet floors do present a possibility that inmates might slip, [plaintiff’s] allegations do not suggest a *substantial* risk of serious harm. . . .”); Henderson v. Brown, 2010 WL 3861056, *4 (N.D. Ill. Sept. 27, 2010) (“Wet and slippery floors . . . do not implicate the Constitution.”).

Cases in which courts have found that a slippery surface poses a substantial risk of serious harm usually involve hazardous factors in addition to the slippery surface, such as when a prisoner has a disability and prison officials are aware of a prisoner’s repeated falls and injuries on a shower floor. E.g., Johnson v. Martinez, 2003 WL 21437585 (9th Cir. June 17, 2003) (unpublished memorandum disposition) (holding that prisoner stated claim for constitutional violation on basis of allegations that he used a cane, had requested accommodations in after he slipped and fell twice and prison officials did nothing before prisoner fell and injured himself again); Frost v. Agnose, 152 F.3d 1124, 1129 (9th Cir. 1998) (finding a triable issue of fact on prisoner’s claim that defendant failed to protect him

from slippery floor in situation in which prisoner had a leg cast, used crutches and had fallen and injured himself repeatedly).

Plaintiff does not allege any medical condition that would place him at a greater risk of slipping on shower floors than the average person would face when walking on a wet shower floor. Additionally, I conclude that the lack of lighting in the shower stalls is not sufficiently hazardous to create a substantial risk of serious harm even when combined with slippery floors. Although the poor lighting would require plaintiff to be more cautious while showering, requiring him to be cautious is not a violation of any constitutional right that he possess. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (“The shower condition he describes may require extra care on his part to keep the toe clean, but such needed precautions do not ignite a constitutional claim.”). See also Sawyer v. Hickey, 62 F.3d 395 (5th Cir. 1995) (per curiam) (holding that requiring prisoner to shower in unlit stall, which resulted in slip and fall, did not rise to constitutional violation); Allen v. Holden, 2011 WL 4737416, *3 (M.D. La. Aug. 29, 2011) (holding that plaintiff had not stated claim for constitutional violation arising out of slip and fall in prison shower that was stainless steel, unlit, had no floor mats and no warning signs). Plaintiff has alleged no facts suggesting that he and other inmates housed at the Monroe County jail were not generally able to exercise caution and take showers without falling.

Moreover, as I explained in a previous case, “it is the rare occasion in which a fall on a wet floor results in more than temporary momentary discomfort and embarrassment.” Williams v. Grams, Case No. 10-cv-433-bbc, dkt. #11 (Oct. 13, 2010) (denying plaintiff

prisoner leave to proceed on slip and fall claim). See also Simmons v. Schriro, 2010 WL 3238943, *2 (S.D.N.Y. Aug. 16, 2010) (“It is well established that a slippery floor does not pose a substantial risk of serious harm.”). Plaintiff alleges no facts suggesting anything about his own health or the particular shower stalls at the Monroe County jail that would increase the ordinary risk posed by a fall from “temporary momentary discomfort” to a “excessive risk” of “serious harm.” Additionally, even if such facts exist, plaintiff alleges no facts suggesting that defendants were aware of them. At most, plaintiff has alleged a claim for the common law tort of negligence. However, because I am dismissing plaintiff’s constitutional claim, I am declining to exercise jurisdiction over his state law negligence claim. If plaintiff wishes to pursue his state law claim, he is free to do so in state court.

ORDER

IT IS ORDERED that

1. Plaintiff Michael Kingsley’s is DENIED leave to proceed on his claim that defendants Robert Conroy, Stan Hendrickson, Nate White, the Monroe County Sheriff’s Department and the Wisconsin Department of Corrections violated his rights under the Constitution by failing to protect him from injury caused by inadequate lighting in the showers at the Monroe County jail. This claim is DISMISSED for failure to state a claim upon which relief may be granted.
2. The court declines to exercise jurisdiction over plaintiff’s state law claim.
3. Plaintiff is obligated to pay the unpaid balance of his filing fee 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 to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

4. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 16th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge