

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

JORDAN D. OSBORNE,

Plaintiff,

v.

SZYMANSKI AND LYNCH,

Defendants.

OPINION AND ORDER

13-cv-881-bbc

Plaintiff Jordan Osborne, a prisoner incarcerated at the Waupun Correctional Institution, has filed a proposed complaint under 42 U.S.C. § 1983 against staff at the Stanley Correctional Institution for failing to protect him from a violent inmate. Plaintiff seeks leave to proceed in forma pauperis on his claims and has made an initial partial payment of the filing fee as directed by the court.

The next step is to screen plaintiff's 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. § 1915.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. McGowan v. Hulick, 612 F.3d 636, 640 (7th Cir. 2010). After

reviewing plaintiff's complaint, I conclude that he may proceed on failure to protect claims against defendants.

The following facts are drawn from plaintiff's complaint.

ALLEGATIONS OF FACT

At the times relevant to this case, plaintiff Jordan Osborne was incarcerated at the Stanley Correctional Institution. On February 25, 2012, plaintiff was housed with inmate Robert Duckett. Plaintiff "began to have problems with him about cell arrangements and strange scents he put in the vent." When plaintiff talked to Duckett about these issues, Duckett "cursed at [him] and continued on." Tensions rose between the two and plaintiff described Duckett as a "known hostile" inmate. Plaintiff spoke with defendant sergeant Szymanski and defendant unit manager Lynch about the problems he was having with Duckett but they would not approve a new housing assignment for plaintiff. On March 14, 2013, plaintiff and Duckett had another argument. That night, while plaintiff was asleep, Duckett scalded him with boiling water. Plaintiff suffered second- and third-degree burns.

OPINION

I understand plaintiff to be bringing claims against defendants Szymanski and Lynch for failing to protect him from harm at the hands of his cellmate despite knowing that the cellmate was hostile towards plaintiff and tensions between them were high. To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a

“substantial risk of serious harm” and (2) the prison officials identified acted with “deliberate indifference” to that risk. Farmer v. Brennan, 511 U.S. 825, 834 (1994); Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005). “[O]ne does not have to await the consummation of threatened injury to obtain preventive relief.” Farmer, 511 U.S. at 845 (quoting Pennsylvania v. West Virginia, 262 U.S. 553, 593 (1923)).

At this point, I can infer from plaintiff’s allegations that he faced a substantial risk of serious harm and that defendants ignored him, so I will allow him to proceed on these claims. However, as the case proceeds to summary judgment or trial, plaintiff will have to explain exactly what he told defendants about the nature of the threat he faced before he was harmed; just saying that his cellmate was arguing with him will not prove that he faced a substantial risk.

ORDER

IT IS ORDERED that

1. Plaintiff Jordan Osborne is GRANTED leave to proceed on his Eighth Amendment failure to protect claims against defendants sergeant Szymanski and defendant unit manager Lynch.

2. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of

this order to answer or otherwise plead to plaintiff's complaint if it accepts service on behalf of the state defendants.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendants, he should serve the lawyers directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the balance of his unpaid 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 under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 5th day of March, 2014.

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