

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

RODNEY REDMOND,

Plaintiff,

v.

OPINION & ORDER

13-cv-145-jdp¹

DAWN LAURENT, NICHOLAS BUHR,
DAN NORGE, DR. KALLAS, MICHAEL MEISNER,
TIM DUMA, TODD CALLISTER,
KAREN ANDERSON, DR. ANKARLO, GARY MAIER,
DONALD MORGAN, JANEL NICKEL, CATHY JESS,
RODNEY KRATZ, C.O. PRESTON, SGT. ROYCE,
SGT. GEE and C.O. PARENTEAU,²

Defendants.

In this case, plaintiff Rodney Redmond, a prisoner housed at the Columbia Correctional Institution, alleges that prison officials have failed to adequately treat his mental illnesses and protect him from self-harm. Plaintiff's amended complaint was originally screened by District Judge William M. Conley on February 6, 2014, and plaintiff was allowed to proceed on the following claims:

- An Eighth Amendment claim against defendant C.O. Parenteau for failing to protect plaintiff from harming himself on October 7, 2012.
- Wisconsin law negligence claims against defendants C.O. Preston and Rodney Kratz for failing to ensure that plaintiff swallowed his prescribed medication rather than stockpile it, and against defendants Donald Morgan, Janel Nickel, Sergeant Gee, and Sergeant Royce for failing to look into this problem after plaintiff alerted them.

Dkt. 19. However, the court dismissed the portion of plaintiff's amended complaint in which he alleged that various defendants violated his Eighth Amendment rights by providing him

¹ This case was reassigned to me pursuant to a May 16, 2014 administrative order. Dkt. 25.

² I have amended the caption to represent the spelling of defendants' names given in the second amended complaint.

adequate medical care because plaintiff's allegations were too vague to support those claims. *Id.* Also, the court denied plaintiff leave to proceed on a negligence claim regarding defendant Dr. Todd Callister's decision to continue giving plaintiff pill-form medication and an Americans with Disability Acts claim against defendant Dr. Kallas.³ *Id.* Finally, the court granted plaintiff's motion for the court's assistance in recruiting counsel and stated that "plaintiff's counsel will be afforded an opportunity to submit an amended complaint, if appropriate, to correct the deficiencies outlined above." *Id.* at 16 n.5.

Now before the court is a second amended complaint,⁴ filed after the court located counsel for plaintiff, as well as a motion to amend the remaining schedule. After considering these filings, I will allow plaintiff to proceed on Eighth Amendment deliberate indifference claims and state law medical malpractice claims against numerous defendants, and set a new schedule for resolution of the case.

AMENDED COMPLAINT

The court is required to screen plaintiff's second amended 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 and 1915A.

³ The negligence claim against defendant Callister was dismissed on state-employee immunity grounds, and the claim against defendant Kallas was dismissed under Federal Rule of Civil Procedure 20 for failing to arise out of the same series of transactions as the rest of plaintiff's claims. Dkt. 19.

⁴ Plaintiff's new counsel labels this complaint as the "first amended complaint," but plaintiff already amended his complaint once before counsel was recruited. *See* Dkt. 9.

I. Allegations of fact in the complaint

Plaintiff Rodney Redmond is a seriously mentally ill inmate. Plaintiff suffers from a variety of disorders, including posttraumatic stress disorder, anxiety, mood disorder, depressive disorder, and personality disorder. He has taken several psychotropic medications as part of his treatment, including Depakote, Zoloft, risperidone, Prozac, and valproic acid. Plaintiff is a moderate to high suicide risk, has been repeatedly placed in observation, and has been given an “MH-2” mental health code. The MH-2 designation “indicates either serious mental illness diagnosis and/or serious mental illness function.” Dkt. 29, at 13.

In August 2011, plaintiff was incarcerated at the Columbia Correctional Institution, located in Portage, Wisconsin. I understand plaintiff to be saying that three defendants, Dawn Laurent (the Psychological Services Unit supervisor), Nicholas Buhr (a psychological associate assigned to segregation unit 1), and Dan Norge (a psychological associate assigned to segregation unit 2), were staff members directly involved in plaintiff’s treatment at CCI.

Throughout his time at CCI, plaintiff repeatedly mentioned suicide, took actions (such as tying a sheet around his neck) indicating that he was suicidal, and made complaints about inadequate mental health care. In particular, on December 3, 2011, plaintiff overdosed on medication provided to him by CCI staff. The hospital in which he was treated reported that he had hoarded pills for the previous two weeks and had experienced similar episodes in the past. Plaintiff threatened to take even more pills in the future. Plaintiff’s medications were switched from pill form to liquid or crushed form to prevent pill hoarding.

Plaintiff continued to threaten suicide. On about August 29, 2012, plaintiff was transferred to the Wisconsin Resource Center, located in Winnebago, Wisconsin, for special mental health and behavioral treatment because of his difficulties with coping and impulse

control and for threatening self-harm. While at WRC, a physician switched plaintiff's prescription medication from liquid or crushed form back to pill form.

Plaintiff returned to CCI in September 2012. Defendant Dr. Todd Callister continued plaintiff's medication regimen in pill form. Defendant correctional officers Rodney Kratz and Preston (who are not medical professionals) distributed pill-form medication to plaintiff without watching him swallow the medication. Plaintiff continued to threaten suicide and make complaints about inadequate mental health care. Plaintiff also complained about Kratz and Preston not watching him swallow his medication.

The policy of having non-medical staff distribute pill-form medication was dangerous for inmates such as plaintiff, who could stockpile medication because the non-medical staff would not watch inmates swallow the medication. Defendant supervisory officials Karen Anderson (the Health Services Unit manager), Michael Meisner (the warden), Tim Duma (the deputy warden), Donald Morgan (the supervisor of the segregation units), Janel Nickel (the security director), Dr. G. Ankarlo, (the Department of Corrections mental health director), Gee (a sergeant), and Royce (a sergeant) were aware of the problems with letting non-medical staff hand out pill-form medication, but failed to take any action to reform the process.

On October 7, 2012, plaintiff told defendant correctional officer Parenteau that he needed to go into observation status or he would kill himself. Parenteau responded that "Redmond should wait until the third shift so he did not have to do the paperwork." *Id.* at 11. During the third shift, plaintiff overdosed on pills and was taken to the emergency room. When he returned from the hospital, he was given his medication in liquid or crushed form.

Plaintiff lists the following reasons that his treatment was "inappropriate and dangerous," all of which remained in place despite his attempts at putting defendants on notice about the problems:

- a. [Plaintiff's treatment] lacked sufficient safeguards to provide Redmond medication in only liquid or crushed-pill form, which resulted in suicide attempts and self-harm by Redmond;
- b. It lacked an adequate watch-take policy for administration of Redmond's medication and lacked adequately trained personnel who could implement such a watch-take policy;
- c. It lacked a structured protocol for medication noncompliance to prevent suicide attempts and self-harm;
- d. It lacked sufficient safeguards and clinical monitoring to address and alleviate Redmond's suicidal ideation and self-harm;
- e. It lacked an appropriate coping skills component despite Defendants' knowledge of Redmond's need for coping skills, such as those provided by the WRC;
- f. It lacked consistency in medical staffing and medication types and doses;
- g. It lacked sufficient safeguards to prevent Redmond from spending long periods of time in solitary confinement and segregation where suicide attempts are more likely to occur;
- h. It required that correctional officers, rather than nurses, watch him take his medication;
- i. It failed to utilize the special management unit (SMU);
- j. It failed to provide adequate suicide assessment, observation and intervention;
- k. It failed to refer him to other correctional facilities that had adequate treatment plans and mental health units where Redmond could be appropriately treated and where his suicidal ideation could be properly addressed[; and]
- l. It lacked a detailed and structured treatment plan specific to Redmond's needs.

Dkt. 29, at 15-16.

Defendant Dr. G. Ankarlo, the Department of Corrections mental health director, was made aware of these problems through the inmate complaint review system yet did nothing to address them. Defendant Cathy Jess, the DOC Division of Adult Institutions administrator, is

responsible for promulgating policies at CCI, yet has not formulated policies concerning day-to-day care of mentally ill inmates in segregation.

Defendants Warden Michael Meisner and Deputy Warden Tim Duma were both aware of the inadequate mental health treatment plaintiff was receiving, plaintiff's self-harm, and the lack of adequate policies regarding mental health treatment, yet failed to address the problems.

2. Analysis

Plaintiff's second amended complaint does not materially differ from his previous amended complaint regarding the Eighth Amendment claim on which he is already proceeding against defendant Parenteau, nor does it renew his previously dismissed attempt at an American with Disabilities Act claim, so I need not discuss those claims further. Because plaintiff's new complaint contains more detailed allegations regarding his remaining Eighth Amendment and negligence claims, those claims are discussed below.

a. Eighth Amendment medical care

I understand plaintiff to be bringing Eighth Amendment medical care claims against several defendants who allegedly provided him inadequate medical care or supervised that care, knew about the problems, and did not attempt to improve it. As plaintiff is already aware from the original screening order, to state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a "serious medical need" and that defendants were "deliberately indifferent" to this need. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

In the February 5, 2014 order, the court assumed for purposes of screening that plaintiff's mental health problems constituted a serious medical need, and I will as well. As for

deliberate indifference on defendants' part, the court stated, "Absent specific facts illustrating how his prescribed treatment regimen was inappropriate, Redmond's general dissatisfaction with the level of care provided is not sufficient to state a claim for deliberate indifference." Dkt. 19 at 14. In his amended complaint, plaintiff rectifies this problem by listing 12 ways his treatment was "inappropriate and dangerous," *see supra*, at 5. He alleges that the defendants acted with deliberate indifference in the following ways:

- Defendants Laurent, Buhr, and Norge directly persisted in providing plaintiff with inadequate mental health care despite knowing the risk to plaintiff.
- Defendants Ankarlo, Jess, Meisner, and Duma were aware of the flaws in treatment yet failed to do anything in a supervisory capacity to fix the problems.

I conclude that plaintiff's revised allegations are sufficient to state Eighth Amendment deliberate indifference claims against these defendants. However, I caution plaintiff that at the summary judgment or trial stages of the case, to prevail on his Eighth Amendment claims, he will have to show that the problems with his medical care stem from more than just his disagreement with defendants' medical decisions, *see Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997), or even defendants' negligence, *see Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). With regard to his claims against high-ranking non-medical personnel, he will need to show that those officials were not "entitled to relegate to the prison's medical staff the provision of good medical care." *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009).

b. State law negligence

Plaintiff is already proceeding on negligence claims against defendants C.O. Preston and Rodney Kratz for failing to ensure that plaintiff swallowed his prescribed medication rather than stockpile it, and against defendants Donald Morgan, Janel Nickel, Sergeant Gee, and Sergeant Royce for failing to look into this problem after plaintiff alerted them. Plaintiff's second

amended complaint beefs up his negligence allegations enough to show that he intends to raise further-reaching claims against more defendants than discussed in the February 6, 2014 screening order. In particular, I understand those claims to be the following:

- Defendant Dr. Callister negligently continued plaintiff's medication regimen in pill form.
- Defendant correctional officers Kratz and Preston negligently provided plaintiff with medication without watching him swallow it.
- Defendant supervisory officials Anderson, Meisner, Duma, Morgan, Nickel, Ankarlo, Gee, and Royce were aware of the problems with letting non-medical staff hand out pill-form medication, but negligently failed to take any action to reform the process.

As the court stated in the previous screening order, a negligence claim includes the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) harm to the plaintiff. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860. Given his allegations about the danger he faced from being allowed to stockpile medications, I conclude that plaintiff may proceed on each of his negligence claims.

This includes plaintiff's claim against defendant Callister, which was dismissed on the theory of state-employee immunity because Callister's "decision to authorize pill-form medication involved the exercise of medical judgment," making the ministerial duty exception to state employee immunity inapplicable. Dkt. 19, at 11. I doubt that this distinction matters, because under Wisconsin law, there is an exemption to governmental immunity for the acts of officers making medical decisions. *See DeFever v. City of Waukesha*, 2007 WI App 266, ¶ 14, 306 Wis. 2d 766, 743 N.W.2d 848 (citing *Scarpaci v. Milwaukee Cnty.*, 96 Wis. 2d 663, 292 N.W.2d 816 (1980)). At any rate, defendants remain free to argue governmental immunity as the case proceeds, but I will not dismiss any claim on that basis at the screening stage of the proceedings.

Finally, because I do not understand plaintiff's complaint to raise any claims against

defendant Dr. Gary Maier, a psychiatrist at CCI, I will dismiss him from the case.

MOTION TO AMEND SCHEDULE

Plaintiff has filed a motion to modify the remaining schedule because plaintiff's deadline to submit expert disclosures (December 15, 2014) was already upon him. That motion will be granted. The new schedule will be as follows:

- Disclosure of experts: plaintiff: March 16, 2015; defendants: May 20, 2015
- Deadline for filing dispositive motions: June 5, 2015
- Discovery cutoff: September 18, 2015
- Settlement letters: September 18, 2015
- Rule 26(a)(3) disclosures and all motions in limine: October 2, 2015;
Responses: October 17, 2015
- Final Pretrial Conference: October 28, 2015 at 4:00 p.m.
- Trial: November 2, 2015 at 9:00 a.m.

ORDER

IT IS ORDERED that:

- I. Plaintiff Rodney Redmond is GRANTED leave to proceed on the following claims:
 - a. An Eighth Amendment claim against defendant C.O. Parenteau for failing to protect plaintiff from harming himself on October 7, 2012.
 - b. Eighth Amendment medical care claims against defendants Dawn Laurent, Nicholas Buhr, Dan Norge, G. Ankarlo, Cathy Jess, Michael Meisner, and Tim Duma.
 - b. Wisconsin law negligence claims against defendants Todd Callister, Rodney Kratz, C.O. Preston, Karen Anderson, Meisner, Duma, Donald Morgan, Janel Nickel, Ankarlo, Sergeant Gee, and Sergeant Royce.

2. Defendant Gary Maier is DISMISSED from the case.
3. The caption is AMENDED to include all of the defendants against whom plaintiff is proceeding.
4. The state may have 21 days to file an answer to the amended complaint for all defendants it chooses to represent.
5. Plaintiff's motion to amend the remaining schedule, Dkt. 30, is GRANTED. The remaining schedule is amended as stated in the opinion above.

Entered this 7th day of January, 2015.

BY THE COURT:

/s/
JAMES D. PETERSON
District Judge