

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

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JOHN L. DYE, JR.,

Plaintiff,

v.

OPINION & ORDER

14-cv-76-jdp

BRYAN BARTOW, ERIC, DR. GAANAN,  
LOYDA LORIA, DR. ANDRADY,  
SUSAN KOON, CATHY NEMETH,  
LARRY JENKINS, ROBERT HUMPHERYS,  
DENISE SYMDON, HOLLY GUNDERSON,  
LON BECHER, MARY KLEMZ, CATHY JESS  
and JOHN DOES,

Defendants.

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Plaintiff John Dye, a prisoner incarcerated at the Waupun Correctional Institution, brings this lawsuit alleging that prison officials failed to adequately address his severe neck pain when he was housed at the Wisconsin Resource Center (WRC). Plaintiff has “struck out” under 28 U.S.C. § 1915(g), because on three different occasions he filed lawsuits that were dismissed as frivolous. The court has already allowed plaintiff to proceed on an Eighth Amendment deliberate indifference claim that defendant therapist Eric ended his therapy sessions for no reason, but further litigation of that claim has been stayed while the court sorts through plaintiff’s other claims. The court dismissed the remainder of plaintiff’s allegations in his original complaint for failure to comply with Federal Rule of Civil Procedure 8:

At this point I conclude that plaintiff has alleged that he has a serious medical need in the form of his allegedly severe neck pain. However, for the most part, plaintiff has failed to identify the proper defendants. Liability under § 1983 must be based on a defendant’s personal involvement in the constitutional violation. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995).

Plaintiff provides very few allegations against individual defendants, and most of those have to do with the very beginning of his care at the Wisconsin Resource Center, where it appears that defendants Gaanan and Loria at least made some attempt at diagnosing his problems and treating him. I conclude that he may proceed on a claim against defendant therapist Eric, who plaintiff believes was responsible for ending his therapy and lying about the reasons for it. But the vast majority of the picture remains extremely unclear: plaintiff alleges that he is being forced to see a psychiatrist before he will be allowed to see a general practitioner and alleges that each defendant is responsible, but he names fifteen people in a wide variety of roles (ranging from nurse to warden to assistant administrator of the Department of Corrections Division of Adult Institutions) as defendants even though it seems extremely unlikely that all of these people are responsible for his course of treatment.

Dkt. 7 at 7-8.

Plaintiff filed an amended complaint, which I dismissed for similar reasons:

Plaintiff's amended complaint provides almost no new factual information. As with the original complaint, plaintiff provides a relatively detailed accounting of various visits with doctors in his first few months at the Wisconsin Resource Center, along with various treatment he received, but he is almost completely silent about the course of treatment over the second half of his thirteen-month stint at WRC. Importantly, because plaintiff has struck out under 28 U.S.C. § 1915(g), he will only be allowed to proceed on claims in this case showing that he was in imminent danger of serious physical harm at the time he filed his complaint, which in this case, was February 2014. Plaintiff's failure to explain what type of treatment he was getting at the end of his stint at WRC makes it impossible to tell whether he can meet this standard.

The lack of clarity regarding his treatment also means that plaintiff fails to show *who* violated his rights. Aside from the first few months of treatment, plaintiff does not explain his interactions with the doctors directing his care, defendants Gaanan and Loria. Plaintiff alleges that he wrote letters to various defendants who are higher-ups at WRC or the Department of Corrections, but without knowing what type of treatment he was receiving at that time or when he wrote those letters, I cannot tell whether he has stated claims against these defendants.

Dkt. 16, at 3 (footnotes omitted). I gave plaintiff a final chance to submit an amended complaint explaining the specific actions taken by defendants that led him to believe that they violated his rights, in particular the treatment he was receiving around the time he filed his complaint. *Id.* at 3-4.

Now plaintiff has filed his second amended complaint. While plaintiff continues to struggle to provide precise allegations explaining specific actions taken by defendants, I now understand him to be saying the following:

- Defendant doctors Loyda Loria and Gaanan initially prescribed plaintiff Relafen and then switched to Naproxen for his neck pain. But after plaintiff complained that the Naproxen did not relieve his pain, they failed to change medications or take any other actions to treat his pain.
- Plaintiff was subjected to a prison policy mandating that he be seen by a facility psychiatrist before being seen by a general practitioner for his physical health problems. As a result, when plaintiff complained about his lack of treatment to the various staff members named as defendants, they either referred him to defendant Dr. M. Andrade (a psychiatrist), or told him to file a grievance. Andrade then refused to schedule plaintiff with a general practitioner.

Based on these allegations, I conclude that plaintiff has stated Eighth Amendment medical care claims against defendants Loria and Gaanan for failing to change plaintiff's treatment even after he alerted them to his medication's ineffectiveness. *Gonzalez v. Feinerman*, 663 F.3d 311, 314 (7th Cir. 2011) (physicians are "obligated not to persist in ineffective treatment").<sup>1</sup>

As for the policy mandating plaintiff to be seen by a psychiatrist before a general practitioner, I conclude that plaintiff has failed to state claims against the various WRC staff members and higher level state officials he alleges enforced this policy. While it is puzzling

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<sup>1</sup> Because the "imminent danger" requirement of 28 U.S.C. § 1915(g) applies to plaintiff's status at the time he filed his complaint, plaintiff does not lose the ability to proceed on imminent danger claims by virtue of his transfer from WRC after he filed the complaint. *See Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003).

that a detainee would have to initially see a psychiatrist for physical health problems, psychiatrists are physicians, so it difficult to see how other officials could be acting with deliberate indifference by telling plaintiff to consult with Andrade first or to file a grievance. Those procedures should have led to adequate medical care. I will dismiss those defendants from this case.

As for a claim against Andrade herself, plaintiff alleges that she would refuse to schedule plaintiff with a general practitioner even though he continued to suffer from neck pain. I infer from plaintiff's allegations that Andrade did not treat plaintiff herself and restricted plaintiff from getting help from others, so I will allow plaintiff to proceed on an Eighth Amendment claim against Andrade.

Plaintiff has also filed a motion for injunctive relief, stating that Andrade has been transferred to the Waupun Correctional Institution and has retaliated against plaintiff by discontinuing one of plaintiff's psychotropic medications. Plaintiff wants the court to intervene in his psychiatric treatment by reinstating the provision of his medication or by removing Andrade as his psychiatrist. I cannot address the merits of plaintiff's motion because he is not proceeding on claims regarding Andrade's psychiatric care in this lawsuit. Because plaintiff could include such a claim in this lawsuit under Federal Rule of Civil Procedure 18, I will give him a short period of time to supplement his complaint with this claim. Because this lawsuit needs to start moving forward, I will not allow him to add the claim to this lawsuit after that deadline.

## ORDER

IT IS ORDERED that:

1. Plaintiff John Dye's second amended complaint, Dkt. 19, is the operative pleading in this lawsuit.
2. Plaintiff is GRANTED leave to proceed on Eighth Amendment deliberate indifference claims against defendants Eric, Loria, Gaanan, and Andrade.
3. Plaintiff is DENIED leave to proceed on the remainder of his claims, and the remaining defendants are DISMISSED from the lawsuit.
4. Plaintiff's motion for injunctive relief, Dkt. 20, is DENIED.
5. Plaintiff may have until October 15, 2015, to submit a supplement to his complaint adding his new claims against defendant Andrade.
6. Pursuant to 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. 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 for defendants.
7. For the time being, 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.
8. 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 his documents.

9. 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 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 September 15, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge