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

MECQUON GOODWIN,

Plaintiff,

v.

OPINION & ORDER

JAMES GREER, J. VOEKS, DR. J. HANNULA, T. MAASSEN, DR. K. ADLER, SUSAN NYGREN, DR. LUY, W. MC CREEDY, DR. WILLIAMS, B. BEHRAND, and DR. T. CORRELL,

16-cv-96-jdp

Defendants.

Pro se plaintiff Mecquon Goodwin, a prisoner in the custody of the Wisconsin Department of Corrections (DOC), has filed a complaint against DOC medical personnel. Plaintiff alleges that doctors and medical staff at the prisons where he has been incarcerated since 2012 provided him with inadequate treatment for problems that he had with his left leg. Dkt. 1. With his proposed complaint, plaintiff has filed a motion for appointment of counsel. Dkt. 4. Plaintiff has also made an initial partial payment of his filing fee, as directed by the court.

The next step in this case is for me 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 monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. In screening any pro se litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). After reviewing the complaint with this principle in mind, I conclude that plaintiff has adequately alleged Eighth Amendment claims against some, but not all, of the defendants for acting with deliberate indifference to his serious medical needs. I will grant

plaintiff leave to proceed with these claims. But I will deny plaintiff leave to proceed against defendants James Greer, J. Voeks, and Dr. Hannula, and I will dismiss these defendants from the case.

ALLEGATIONS OF FACT

Plaintiff is currently incarcerated at the Oakhill Correctional Institution, located in Oregon, Wisconsin. The relevant events in this case occurred between April 2012 and September 2015. During this time, plaintiff was incarcerated at several different prisons. Defendants are medical personnel at these DOC facilities.

Plaintiff has experienced medical issues with his left leg since November 2010. He underwent surgery to correct a valgus deformity, but he experienced pain after the operation. In May 2011, plaintiff underwent another surgery to fix a bone in his leg that had not healed properly after the first surgery. The following month, the incision on plaintiff's left leg opened up and he sought treatment from defendant Dr. Hannula, a physician at the Stanley Correctional Institution. Dr. Hannula probed the incision with a Q-tip to release the pressure, but the bleeding would not stop. Plaintiff had to go to the University of Wisconsin Hospital to see another doctor.

In March 2012, plaintiff again started experiencing pain in his leg, and an x-ray showed that he had an old fracture in his left knee that had not healed properly. An ultrasound showed that vascular hypoechoic fluid had collected inside plaintiff's left knee. The ultrasound also revealed a hematoma or possible effusion in plaintiff's leg and knee.

Since the x-ray and ultrasound in April 2012, DOC medical personnel have failed to properly address plaintiff's pain and underlying condition. From April 2012 to November

2012, plaintiff complained to personnel at the Jackson Correctional Institution, including defendants T. Maassen and Dr. Adler. But they refused to treat his condition. In November 2012, after plaintiff was transferred to the Racine Correctional Institution, he complained to defendant Susan Nygren, the manager of the prison's Health Services Unit, and to defendant Dr. Luy, the institution's acting physician. Again, medical personnel did not provide plaintiff with any treatment.

By May 2013, plaintiff had been transferred to the Kettle Moraine Correctional Institution. His leg had swollen because of an infection that medical staff at other prisons had failed to treat, and plaintiff experienced considerable pain. Defendants W. Mc Creedy and Dr. Williams, who both worked at Kettle Moraine, refused to send plaintiff to an outside specialist to evaluate his leg.

Plaintiff was transferred to the Oakhill Correctional Institution in June 2014. He again complained about his leg pain and swelling to the prison's acting physician, defendant Dr. Correll, and to the prison's health services manager, defendant B. Behrand. Neither defendant helped plaintiff. Six months later, plaintiff went to the emergency room because of pain and swelling in his leg. An infection in plaintiff's leg had moved up to his heart and arteries, causing serious medical problems. Doctors treated plaintiff's infection over the course of a nine-day stay in emergency care, and they eventually removed infected hardware from inside plaintiff's leg. Plaintiff then spent several weeks recovering at a prison infirmary.

ANALYSIS

"The Eighth Amendment safeguards the prisoner against a lack of medical care that may result in pain and suffering which no one suggests would serve any penological purpose."

Rodriguez v. Plymouth Ambulance Serv., 577 F.3d 816, 828 (7th Cir. 2009) (citations and internal quotation marks omitted). These safeguards prevent prison officials from "intentionally denying or delaying access to medical care or intentionally interfering with prescribed treatment." *Id.* at 829. This is the type of claim that plaintiff is alleging in this case: he contends that prison medical personnel refused to respond to his complaints of pain, and that by the time they finally addressed his condition, it had gotten so serious that plaintiff needed a nine-day stay at a hospital and a multi-week recovery in a prison infirmary. I conclude that plaintiff has adequately alleged Eighth Amendment claims against defendants T. Maassen, Dr. Adler, Susan Nygren, Dr. Luy, W. Mc Creedy, Dr. Williams, B. Behrand, and Dr. Correll, and so I will allow him to proceed against these defendants.

Claims under the Eighth Amendment have "both an objective and a subjective element: (1) the harm that befell the prisoner must be objectively, sufficiently serious and a substantial risk to his or her health or safety, and (2) the individual defendants were deliberately indifferent to the substantial risk to the prisoner's health and safety." *Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006). For the first element, plaintiff alleges that he complained to prison officials about leg pain, swelling, and infection. Dkt. 1, ¶¶ 23-29. These medical conditions were sufficiently serious for purposes of the Eighth Amendment. For the second element, plaintiff alleges that medical personnel ignored his complaints or delayed in treating him, which made his condition worse. To show deliberate indifference, plaintiff does not need to allege "that the prison officials intended, hoped for, or desired the harm that transpired. . . . It is enough to show that the defendants actually knew of a substantial risk of harm to the inmate and acted or failed to act in disregard of that risk." *Walker v. Benjamin*, 293 F.3d 1030, 1037 (7th Cir. 2002) (citations and internal quotation marks omitted).

Accepting the allegations in the complaint as true for purposes of screening it, I conclude that plaintiff has adequately pleaded Eighth Amendment claims for deliberate indifference to his serious medical needs.

Although plaintiff has stated a claim, I conclude that he cannot proceed against three of the defendants named in the complaint: James Greer, the director of the DOC's Bureau of Health Services; J. Voeks, the health services manager at the Stanley Correctional Institution; and Dr. Hannula, a physician at the Stanley Correctional Institution. Plaintiff does not allege that Greer was personally involved in depriving him of adequate medical care, which is a requirement for liability under 28 U.S.C. § 1983. *Doyle v. Camelot Care Ctrs., Inc.*, 305 F.3d 603, 614 (7th Cir. 2002). Plaintiff cannot "rely on the doctrine of respondeat superior to hold supervisory officials liable for the misconduct of their subordinates. . . . Rather, the supervisory officials also must have had some personal involvement in the constitutional deprivation, essentially directing or consenting to the challenged conduct." *Id.* at 615. Based on the allegations in plaintiff's complaint, it does not appear that Greer was personally involved in the challenged conduct. I will therefore deny plaintiff leave to proceed against Greer, and I will dismiss him from this case.

As for Voeks and Dr. Hannula, plaintiff does not allege that they did anything wrong. He alleges that while he was incarcerated at the Stanley Correctional Institution, he started experiencing leg pain after an operation to correct a valgus deformity. Dkt. 1, ¶ 16. Plaintiff underwent surgery to have a bone fixed, and then he developed an infection. *Id.* ¶ 17. Dr. Hannula treated the infection, but when her efforts were insufficient, prison officials took plaintiff to the hospital. *Id.* ¶ 18. Thus, these defendants were *treating* plaintiff, not acting with deliberate indifference to his condition. Moreover, plaintiff appears to limit his claims to

the period between April 2012 and September 2015, during which he alleges that his "health needs were not being met." *Id.* ¶ 32. But plaintiff left the Stanley Correctional Institution before April 2012, which means that the claims against Voeks and Dr. Hannula are outside the time frame that he identifies. I will therefore deny plaintiff leave to proceed against Voeks and Dr. Hannula, and I will dismiss them from this case.

With his complaint, plaintiff has also filed a motion for assistance recruiting counsel. Dkt. 4. I will deny this motion without prejudice to plaintiff renewing his request later in this case. Litigants in civil cases do not have a constitutional right to a lawyer and the court has discretion to determine whether assistance recruiting counsel is appropriate in a particular case. *Pruitt v. Mote,* 503 F.3d 647, 654, 656 (7th Cir. 2007). To prove that assistance recruiting counsel is necessary, this court generally requires that a pro se plaintiff: (1) provide the names and addresses of at least three lawyers who declined to represent him in this case; and (2) demonstrate that his is one of those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds his demonstrated ability to prosecute it. *Id.* at 655; *see also Young v. Cramer*, No. 13-cv-077, 2013 WL 5504480, at *2 (W.D. Wis. Oct. 3, 2013).

To support his motion for assistance recruiting counsel, plaintiff has submitted letters from several firms that declined to assist him with this case. Dkt. 4-1. These letters satisfy the requirement that plaintiff make a reasonable effort to locate an attorney of his own. *See Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992) ("[T]he district judge must first determine if the indigent has made reasonable efforts to retain counsel and was unsuccessful or that the indigent was effectively precluded from making such efforts."). But plaintiff cannot meet the second requirement for assistance recruiting counsel: demonstrating

that the legal and factual difficulty of this case exceeds his ability to prosecute it. It is too early to tell whether plaintiff's Eighth Amendment claims will outstrip his litigation abilities. The case has not passed the relatively early stage in which defendants may file a motion for summary judgment based on a statute of limitations or exhaustion of administrative remedies, which could result in dismissal of this case before it advances deep into the discovery stage of the litigation. Should the case pass the exhaustion stage, and should plaintiff continue to believe that he is unable to litigate the suit himself, then he should renew his motion, and I will recruit counsel for him.

ORDER

IT IS ORDERED that:

1. Plaintiff Mecquon Goodwin is GRANTED leave to proceed against defendants T. Maassen, Dr. K. Adler, Susan Nygren, Dr. Luy, W. Mc Creedy, Dr. Williams, B. Behrand, and Dr. T. Correll with Eighth Amendment claims for deliberate indifference to plaintiff's serious medical needs.

2. Plaintiff is DENIED leave to proceed against defendants James Greer, J. Voeks, and Dr. J. Hannula, who are DISMISSED from this case.

3. Plaintiff's motion for assistance recruiting counsel, Dkt. 4, is DENIED without prejudice to plaintiff renewing his motion later in this case.

4. 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.

5. 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.

6. 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.

7. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered June 2, 2016.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge