

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

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JEREMY M. BLANK,

Plaintiff,

v.

OPINION AND ORDER

20-cv-732-wmc

JOEL LINDOW, JOHN GEBHART,  
DARREN HUTCHENREUTER,  
MONIQUE STEINER, CAROL ISBELL  
and MITCHELL KUNHART,

Defendants.

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*Pro se* plaintiff Jeremy Blank, who currently is incarcerated at Jackson Correctional Institution (“Jackson”), filed this lawsuit under 42 U.S.C. § 1983, claiming that defendants, all Jackson employees, violated his Eighth Amendment rights under the United States Constitution by failing to protect him from committing severe self-harm in July of 2020. Under 28 U.S.C. § 1915A, the court must screen the amended complaint (dkt. #7) and dismiss any portion that is frivolous or malicious; fails to state a claim on which relief can be granted; or seeks money damages from a defendant who is immune from such relief. For the reasons that follow, the court will allow Blank to proceed against defendants on Eighth Amendment claims for their alleged failure to protect him from self-harm.

ALLEGATIONS OF FACT<sup>1</sup>

Blank names the following Jackson employees as defendants: Sergeant Joel Lindow; Correctional Officer John Gebhart; Correctional Officer Darren Hutchenreuter; Monique

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<sup>1</sup> In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, drawing all reasonable inferences and resolving ambiguities in plaintiff’s favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Steiner, a social worker; Correctional Officer Carol Isbell; and Sergeant Mitchell Kunhart.

On July 8, 2020, Lindow woke up Blank at about 8:30 a.m. because Blank had covered his cell window with a blanket. Lindow instructed Blank to remove the blanket, warning him that he would receive a conduct report if he failed to comply with that order. Blank complied and Lindow left, but shortly thereafter Lindow returned to Blank's cell front and instructed Blank to come with him to the staff desk to receive a conduct report for covering his window. Blank received a punishment of seven days "loss of cell," meaning that Blank was not allowed to be in his cell between about 7:50 a.m. and 9:00 p.m.

At that time, due to the COVID-19 pandemic, Jackson required all prisoners to wear a face mask when outside of their cells and inside buildings, and to keep six feet away from other persons. Blank suffers from asthma and relies on a rescue inhaler on an as-needed basis. On July 8, the requirement that he stay out of his cell and wear a mask caused him to use his rescue inhaler eight times before 11:00 a.m. Because he used the inhaler so frequently, Blank asked defendant Isbell to call Jackson's Health Services Unit ("HSU") to request that Blank be seen immediately. However, Lindow responded shortly after that HSU "wasn't concerned," and that Blank should continue to use his inhaler for relief. (Compl. (dkt. #1) ¶ 24.)

At that point, Blank became distraught and slammed his inhaler on the desk, declaring, "If HSU isn't concerned, neither am I. I don't want the inhaler." (*Id.* ¶ 25.) Blank states that defendants Gebhart, Hutchenreuter, Steiner and Isbell all observed this interaction. Ultimately, however, Blank took back his inhaler, but when Lindow said he did not care, Blank replied, "I don't give a shit about nothin. I'll just kill myself. I don't

give a shit.” (*Id.* ¶ 28.) Lindow replied, “Will you go ahead and sign a ‘DNR’ so I don’t have to bring your ass back?” (*Id.*) Blank then said, “I love life too much to die,” at which point Gebhart joined the conversation, encouraging Blank to sign a DNR, causing Blank to shoot back “Aren’t you a fucking tough guy.” (*Id.* ¶ 31.)

At about 12:10 p.m. that afternoon, Blank asked Isbell to call Jackson’s Psychological Services Unit (“PSU”) staff. Isbell then informed Blank that PSU staff directed unit staff to monitor him. Blank alleges that over the next several hours, he did not act normal, and a correctional officer informed defendant Kunhart about Blank’s behavior, recommending that he be put on clinical observation status. Kunhart declined, allegedly believing that Blank was seeking attention and that he would not “deal with it” because it was Friday. (*Id.* ¶ 43.)

At approximately 1:50 a.m. the next morning, Blank attempted suicide by slicing the inside of his elbow approximately five to seven times. Upon seeing blood pouring from his arm, Blank left the bathroom and asked for help. Jackson officials called an ambulance, and Blank was transported to a hospital, where he received five stitches.

## OPINION

The court understands plaintiff to be pursuing Eighth Amendment failure to protect claims against all defendants. Prison officials are required by the Eighth Amendment to take reasonable measures to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). To prevail on a failure to protect claim, an inmate must prove: (1) he faced a “substantial risk of serious harm”; and (2) the prison official acted with “deliberate indifference” toward that risk. *Id.* at 834. Suicide or attempted suicide

constitutes a serious risk to a prisoner's health and safety. *Collins v. Seemen*, 462 F.3d 757, 760 (7th Cir. 2006) (quoting *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001)). A prison official acts with deliberate indifference to a risk of self-harm if the official is aware of the significant likelihood that an inmate may imminently harm himself, but the official fails to take reasonable steps to prevent the inmate from that harm. *Pittman ex rel. Hamilton v. County of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (citations omitted); *Rice ex rel. Rice v. Correctional Med. Servs.*, 675 F.3d 650, 665 (7th Cir. 2012) (“[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies.”).

Under the lenient pleading standard, plaintiff's allegations as to defendants Lindow, Gebhart, Hutchenreuter, Steiner and Isbell are sufficient for him to proceed on these claims. Each of these defendants interacted with plaintiff during the afternoon of July 8, and each of them allegedly was aware that plaintiff was having significant issues with his asthma *and* commented that he would just go and kill himself after Lindow declined to send him to the HSU. In fairness, plaintiff's statements may have been made out of anger or frustration, so there is room to infer that defendants may not have been aware that plaintiff's statements were genuine, but to conclude as much at the screening stage would require the court to inappropriately resolve an ambiguity in *defendants'* favor. Therefore, for purposes of screening only, plaintiff's allegations are sufficient to permit an inference that these defendants were aware that plaintiff was at risk of attempting suicide. It follows that each of their failures to take any preventative actions that afternoon or evening supports an inference of deliberate indifference, since he severely cut himself later that

night.

The court will also grant plaintiff leave to proceed against defendant Kunhart. This defendant allegedly was informed that plaintiff was acting strangely and should have been placed on clinical observation status. Moreover, given that the PSU had already directed unit staff to monitor plaintiff closely *and* this defendant was further warned that plaintiff's behavior needed closer observation, it may be reasonable to infer that Kunhart consciously disregarded the risk that plaintiff would severely harm himself.

Going forward, plaintiff should be aware that for these claims to survive summary judgment, and certainly at trial, he will need to come forward with evidence supporting a finding that each defendant was not only aware that he threatened to kill himself, but had reason to believe that his threat was sincere and that he had the ability to commit severe self-harm. *See Szopinski v. Koontz*, 832 F. App'x 449, 451 (7th Cir. 2020) (requiring a showing that defendants were aware that the threats of self-harm were genuine, and not a "manipulative ploy").

## ORDER

IT IS ORDERED that:

- 1) Plaintiff Jeremy Blank's motion to amend his complaint (dkt. #7) is GRANTED.
- 2) Plaintiff is GRANTED leave to proceed on against defendants Lindow, Gebhart, Hutchenreuter, Steiner, Isbell and Kunhart, on claims of Eighth Amendment failure to protect from self-harm.
- 3) Plaintiff is DENIED leave to proceed on any other claim.
- 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 the state defendants. Under

the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

- 5) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer 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 the defendants' attorney.
- 6) 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.
- 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 is unable to locate him, his case may be dismissed for failure to prosecute.
- 8) Plaintiff's motion for screening (dkt. #8) is DENIED as moot.

Entered this 8th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge