

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

ODUM CARTER,

Plaintiff,

v.

DAVID MAHONEY and
DANE COUNTY/JAIL,

Defendants.

OPINION & ORDER

Case No. 18-cv-183-wmc

Plaintiff Odum Carter brings this action under 42 U.S.C. § 1983 against defendants Sheriff David Mahoney, Dane County and the Dane County Jail. Carter claims that the presence of lead in the water and asbestos in the air conditioning at the Dane County Jail violated his constitutional rights. The complaint is now before the court for screening pursuant to 28 U.S.C. § 1915A. After review, the court concludes that plaintiff may proceed on a Fourteenth Amendment due process claim against Mahoney and Dane County related to the alleged exposure to lead in the drinking water.

OPINION

In 2018 when plaintiff Odum Carter filed his complaint, he was housed at the Dane County Jail.¹ He alleges that there are memoranda posted in the jail explaining that there is lead in the water. He also alleges that there is asbestos in the air conditioning.

¹ Courts must read allegations in *pro se* complaints generously, resolving ambiguities and drawing reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in plaintiff's complaint.

While not apparent in his complaint, the court will assume for purposes of screening that he was a pretrial detainee during the events comprising his claims, and thus that his claims are governed by the due process clause of the Fourteenth Amendment. *Smith v. Dart*, 803 F.3d 304, 309–10 (7th Cir. 2015). The Court of Appeals for the Seventh Circuit has concluded that conditions of confinement claims brought by pretrial detainees are governed by the due process clause of the Fourteenth Amendment, under the standard set forth by the United States Supreme Court in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). *See Hardeman v. Curren*, 933 F.3d 816, 821-22 (7th Cir. 2019). Therefore, the failure to provide adequate conditions of confinement violates the Due Process Clause if: (1) the defendants acted with purposeful, knowing, or reckless disregard of the consequences of their actions; and (2) the defendants’ conduct was objectively unreasonable. *Miranda v. Cty. of Lake*, 900 F.3d 335, 353 (7th Cir. 2018). While it is not enough to show negligence, the plaintiff is not required to prove the defendant’s subjective awareness that the conduct was unreasonable. *Id.* at 353.

While plaintiff’s complaint contains very few allegations, his alleged exposure to lead in the water at the Dane County Jail appears sufficient to permit an inference that he was subjected to conditions that create a risk of injury, at least under the generous standard to which *pro se* litigants are entitled at the screening stage. *Miller v. Winnebago Cty. Sheriff’s Office*, No. 18 C 50334, 2019 WL 184078, at *2 (N.D. Ill. Jan. 14, 2019) (citing *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017)). Exposure to lead can cause significant health issues, and, indeed, plaintiff claims that he has suffered as a result of his exposure and will suffer future damage.

Plaintiff does not explicitly allege that Mahoney knew about lead in the water. However, the court will infer that the allegation that there are memoranda posted in the jail about lead in the water is sufficient to permit a reasonable inference that Mahoney, as sheriff, knows about it and was involved in creating or approving the memorandum. It is also reasonable to infer that the decision to simply notify inmates about the presence of lead in the water -- with no apparent effort to protect inmates from that contaminant -- supports an inference that he acted unreasonably in response to a risk of harm. As such, the court will grant Carter leave to proceed against Mahoney on this claim.

The court will also allow him to proceed against Dane County on his claim based on lead in the water. Under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), to state a claim against a county, plaintiff must allege that the alleged constitutional violation was “caused by: (1) an official policy adopted and promulgated by [the county’s] officers; (2) a governmental practice or custom that, although not officially authorized, is widespread and well settled; or (3) an official with final policy-making authority.” *Thomas v. Cook Cty. Sheriff’s Dep’t*, 604 F.3d 293, 303 (7th Cir. 2010). Since the presence of a memorandum about the water suggests that the jail is following a policy that might violate inmates’ constitutional rights, plaintiff has alleged sufficient facts to implicate the county as well.

Plaintiff’s allegations about asbestos in the air conditioning, however, are too vague to satisfy the requirements of Federal Rule of Civil Procedure 8, which requires a “short and plain statement of the claim’ sufficient to notify the defendants of the allegations against them and enable them to file an answer.” *Marshall v. Knight*, 445 F.3d 965, 968

(7th Cir. 2006). While plaintiff alleges that there is asbestos in the air conditioning, he has not alleged that anyone working at the jail, or for the county, were or are aware of the presence of asbestos in the air conditioning system. Accordingly, it would be unreasonable to infer that Mahoney or Dane County's apparent failure to address the presence of asbestos in the air conditioning system at the jail was objectively unreasonable.

Finally, the court is dismissing Dane County Jail, since a jail is not a suable entity for purposes of for purposes of § 1983; it is a building and cannot be sued because it cannot accept service of the complaint. *Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

As plaintiff proceeds with these claims, he should be aware that he faces an uphill battle. This court has already determined, in two different lawsuits, that Mahoney and Dane County, among others, were not liable for constitutional violations related to the presence of lead in the water at the jail because of significant remediation efforts taken at the jail starting in 2016, and because the plaintiffs made no showing that they suffered injury as a result of lead exposure. *Coleman v. Mahoney*, No. 18-cv-902-wmc, 2021 WL 3128856 (W.D. Wis. July 23, 2021); *Shields v. Mahoney*, No. 17-cv-267-wmc, 2020 WL 4431741 (W.D. Wis. July 31, 2020). Absent a showing that plaintiff actually suffered an injury associated with elevated levels of lead in the water *and* some evidence that Dane County Jail officials failed to take appropriate action to remediate the risk to plaintiff's health during plaintiff's confinement at the jail, it is highly unlikely that this claim will survive summary judgment.

ORDER

IT IS ORDERED that:

1. Plaintiff Odum Carter is GRANTED leave to proceed on Fourteenth Amendment conditions of confinement claims based on his alleged exposure to lead against defendants Dane County and Sheriff Dave Mahoney.
2. Plaintiff is DENIED leave to proceed on any other claim, and the Dane County Jail is DISMISSED.
3. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon defendants.
4. 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.
5. 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.
6. If plaintiff moves 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 this 16th day of September, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge