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

DONTA COLLINS,

Plaintiff,

v.

DAVID J. MAHONEY and
DANE COUNTY JAIL,

Defendants.

OPINION & ORDER

Case No. 18-cv-809-wmc

Plaintiff Donta Collins, an inmate at the Dane County Jail, brings this action under 42 U.S.C. § 1983 against defendants David Mahoney and the Dane County Jail. Collins claims that the presence of lead in the water at the Dane County Jail violates his constitutional and state law rights. In particular, Collins alleges that while he was in custody, all prisoners received a memo from the Dane County Jail notifying them that the water has "a certain level of lead in it" and instructing them to run their water for two minutes before drinking it.[1] Having now screened his complaint pursuant to 28 U.S.C. § 1915A, the court will allow plaintiff to proceed on his Fourteenth Amendment due process and Wisconsin negligence claims against defendant Mahoney, although also cautioning plaintiff that similar claims have run into substantial proof problems at summary judgment.

[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 the complaint when viewed in a light most favorable to plaintiff.

OPINION

Before determining whether Collins may proceed against the named defendants, the court must address a threshold question as to whether Collins' claims are foreclosed. Collins brought a similar lawsuit against defendants Mahoney and Dane County in this court, complaining about his 2004 to 2018 exposure to lead, asbestos and mold. *Collins v. Mahoney*, No. 18-cv-23-wmc (W.D. Wis., filed Jan. 10, 2018). That case was dismissed with prejudice because of his failure to prosecute those claims. Specifically, Collins failed to respond to defendants' motion for summary judgment for failure to exhaust administrative remedies, despite the court expressly warning him that the continued failure to respond would result in dismissal of his lawsuit with prejudice. *Id.*, dkt. #25. While Collins characterizes this lawsuit as a continuation of the previous one, he also alleges that after that lawsuit was dismissed, he proceeded to exhaust his claim related to lead in the water, as well as suggests that he is now pursuing claims related to *more recent* exposure to lead in the water at the Dane County Jail. At least arguably, those alleged facts, as well as the fact that Collins' previous complaint did not include an allegation that prisoners were directed to run their water for two minutes, suggests that Collins' claims in this lawsuit *may* be sufficiently distinct from those disposed of in Case No. 18-cv-23 so as not to be foreclosed Accordingly, the court proceeds to screen Collins' claim.

While not apparent in his complaint, because plaintiff describes himself as a pretrial detainee, the court will assume for purposes of screening 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,* 135 S. Ct. 2466 (2015). *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 exposed to lead in the water at the Dane County Jail appears sufficient to permit an inference that he was subjected to conditions giving rise to 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) (quoting *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017)). In fact, it is well beyond peradventure that exposure to lead can cause significant health issues, and plaintiff alleges that he has suffered as a result of his exposure, and will suffer future damage.

Plaintiff also alleges that Mahoney personally knew that lead was in the water, and the court will infer that his apparent decision simply to advise prisoners to run their water for two minutes, rather than take more aggressive steps to insure the jail's water quality, supports an inference at least at screening that he acted unreasonably in response to a risk of harm. Therefore, plaintiff may proceed against Mahoney on this claim. Having said this, as plaintiff proceed with this claim, 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 led 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.

In addition, the court will dismiss the Dane County Jail, since a jail is not a suable entity 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). Should defendant wish to proceed against Dane County itself on a theory that Maloney was acting on a larger policy or practice, he will need to amend his complaint accordingly.

Finally, plaintiff indicates in his complaint that he is suing under state law as well, and the court will exercise supplemental jurisdiction over this claim under 28 U.S.C. § 1367. To prevail on a claim for negligence in Wisconsin, a plaintiff must prove that the defendants breached their duty of care and plaintiff suffered injury as a result. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865. Since the same allegations that support plaintiff's Fourteenth Amendment claim against Mahoney also arguably support a negligence claim, the court will grant him leave to proceed on this claim as well. The court will not, however, exercise supplemental jurisdiction over any state law claim plaintiff intends to bring against the jail.

ORDER

IT IS ORDERED that:

1. Plaintiff Donta Collins is GRANTED leave to proceed on Fourteenth Amendment conditions of confinement and Wisconsin negligence claims based on his alleged exposure to lead against defendant Dave Mahoney.

2. Plaintiff is DENIED leave to proceed on any other claim, and the Dane County Jail is DISMISSED from suit.

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/

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WILLIAM M. CONLEY
District Judge