

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

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MAURICE A. JOHNSON,

Plaintiff,

v.

C. WARNER, MS. KNEWBERRY,  
T. ANDERSON, and S. ENDER,<sup>1</sup>

Defendants.

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OPINION AND ORDER

19-cv-689-wmc

*Pro se* plaintiff Maurice A. Johnson, who is currently incarcerated at the Oakhill Correctional Institution, filed this lawsuit pursuant to 42 U.S.C. § 1983, challenging how several state employees at two institutions responded to his need for proper footwear. Previously in this lawsuit, the court found that Johnson's complaint did not comply with Federal Rules of Civil Procedure 8 and 20, but gave Johnson the opportunity to file an amended complaint that provided more specific facts about his claims and limited his claims to just one lawsuit. Johnson timely complied, narrowing his claims in this lawsuit to events that took place when he was incarcerated at Columbia Correctional Institution ("Columbia"), and naming as defendants four health care professionals involved in his medical care there. Having reviewed Johnson's amended complaint pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A, the court will grant Johnson leave to proceed on Eighth Amendment and Wisconsin negligence claims against all four defendants.

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<sup>1</sup> The court modified the case caption to be consistent with plaintiff's proposed amended complaint and directs the clerk of court to do the same.

## ALLEGATIONS OF FACT<sup>2</sup>

Plaintiff Maurice Johnson was confined at Columbia during the time frame relevant to his claims in this lawsuit. Defendants C. Warner, Ms. Knewberry, T. Anderson and Ender were all working at Columbia's Health Services Unit ("HSU") during Johnson's incarceration there.

On July 17, 2015, Johnson underwent surgery on both of his feet at the Wisconsin Resource Center ("WRC"). Dr. Wesner performed the surgery and subsequently (1) ordered that Johnson undergo physical therapy and (2) prescribed orthotics. Johnson was transferred to Columbia on or about October 15, 2015. It appears that although Johnson received orthotic inserts, his state-issued boots did not fit properly with the inserts. Therefore, Johnson started submitting "numerous" Health Service Requests ("HSRs") in which he informed HSU staff of severe pain and swelling in his feet from not having proper orthotic shoes. Johnson further alleges that defendants all but ignored his complaints.

In particular, Johnson alleges that T. Anderson and C. Warner were both aware of his persistent complaints of pain because of their supervisory positions within the HSU. Johnson further alleges that he met with defendant Knewberry on several occasions, and although he tried to show her that his feet were swollen and that the screw placed during his surgery had moved, she just ignored him. One such occasion was on May 15, 2015, when Knewberry met with Johnson, and Knewberry told Johnson to continue wearing his inserts despite his complaints that his feet were swollen and in pain. Johnson similarly

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<sup>2</sup> For screening purposes, the court assumes the following facts based on the allegations in plaintiff's complaint, resolving ambiguities and drawing all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

alleges that defendant Ender saw him several times for his complaints about pain and swelling, but Ender did nothing to address his concerns.

On August 29, 2016, defendant Anderson wrote a memorandum to Johnson in which she acknowledged that while he had orthotics, the state-issued boots were not appropriate for him. However, Anderson informed Johnson that he was responsible for ordering shoes that fit the recommendations of his off-site provider, Dr. Wesner. Apparently Johnson still had to wear his state boots, which caused further pain.

In October of 2016, Johnson was transferred back to WRC, and he met with Dr. Wesner on February 18, 2017. Dr. Wesner took an x-ray of Johnson's feet and saw that one of the screws that had been implanted had moved out of place, requiring a second surgery.

## OPINION

Plaintiff seeks to proceed against all four defendants on Eighth Amendment and Wisconsin negligence claims related their failure to respond appropriately to his complaints about swelling and pain. To state an Eighth Amendment claim related to medical or mental health care, a plaintiff must allege facts supporting an inference that his treatment demonstrates "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). "Serious medical needs" include (1) life-threatening conditions or those carrying a risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been "diagnosed by a physician as mandating treatment." *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997).

“Deliberate indifference” encompasses two elements: (1) awareness on the part of officials that the prisoner needs medical treatment and (2) disregard of this risk by conscious failure to take reasonable measures. *Forbes*, 112 F.3d at 266. A Wisconsin negligence claim requires the following four elements: (1) breach of (2) a duty owed (3) that results in (4) an injury or injuries, or damages. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860.

While plaintiff does not specify the nature of his foot condition, his allegations related to his need for surgery, physical therapy and orthotics support a reasonable inference that his need for adequate footwear constitutes a serious medical need. His allegations that each of the defendants received and handled his HSRs complaining about his severe discomfort support an inference that they each were aware of his need for medical care. And under the generous pleading standard this court applies at the screening stage, plaintiff’s allegations support inferences of deliberate indifference as to each defendant. As alleged defendants Anderson and Warner were aware of plaintiff’s repeated HSRs complaining about pain, but both failed to investigate his complaints to determine whether his course of treatment should change; and defendants Knewberry and Ender outright ignored plaintiff’s complaints of severe pain, even with the use of the prescribed orthotics. Moreover, Anderson further acknowledged that plaintiff’s state-issued boots did not meet his needs, but allegedly required plaintiff to obtain and pay for his own shoes. Although fact-finding will reveal more details about defendants’ ability to provide different footwear or provide other interventions to address his pain, plaintiff’s allegations are sufficient to support Eighth Amendment deliberate indifference claims against each defendant.

Furthermore, since the same set of facts supports an inference that each defendant owed plaintiff a duty of care, breached that duty, and that plaintiff's ongoing pain was caused by their failure to take corrective action sooner, the court will exercise supplemental jurisdiction over plaintiff's negligence claims against each defendant. *See* 28 U.S.C. § 1367(a) (“[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . .”).

## ORDER

IT IS ORDERED that:

- 1) Plaintiff Maurice Johnson is GRANTED leave to proceed against defendants T. Anderson, Knewberry, C. Warner, and S. Ender, on Eighth Amendment deliberate indifference and Wisconsin negligence claims.
- 2) Plaintiff is DENIED leave to proceed on any other claim.
- 3) 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. 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 the plaintiff's complaint if it accepts service for defendants.
- 4) For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the 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 is transferred or released while this case is pending, it is plaintiff's 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 claims may be dismissed for his failure to prosecute him.

Entered this 29th day of September, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge