

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

LOUIS KEYS,

Plaintiff,

OPINION AND ORDER

v.

18-cv-435-wmc

JON E. LITSCHER, MICHAEL DITTMAN,
LINDSEY WALKER, SHANE HINTON,
PRESTON LUNON, HENRY HANSEN,
DUSTIN MEEKER, TIMOTHY NELSON,
JESSE MESSER, HEATHER SCHWEEN and
DONNA MAYHEW,

Defendants.

Pro se plaintiff Louis Keys, an inmate in the custody of the Wisconsin Department of Corrections (“DOC”), housed at Columbia Correctional Institution (“Columbia”), alleges that defendants, various employees of the DOC, most of whom are employed at Columbia, violated his Eighth Amendment rights by failing to protect him from self-harm and provide adequate medical care. (Compl. (dkt. #1).) Because Keys is incarcerated and is seeking redress from governmental employees, the Prison Litigation Reform Act (“PLRA”) requires the court to screen his complaint and dismiss any portion that is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. For the reasons that follow, the court will grant plaintiff leave to proceed on an Eighth Amendment deliberate indifference claim against defendants Walker, Hinton, Lunon, Hansen, Meeker, Nelson, Messer, and Mayhew, but deny him leave in all other respects, and will dismiss Litscher, Dittman and Schween from this action.

ALLEGATIONS OF FACTS¹

Plaintiff Louis Keys is an inmate, incarcerated at Columbia. For all times relevant to his complaint, defendant Jon Litscher was the Secretary of the DOC; defendant Michael Dittman was the Warden of Columbia; Lindsey Walker was the unit manager for the restrictive housing units at Columbia; Shane Hinton was a level two supervising officer/captain; Preston Lunon was a sergeant; Henry Hansen, Dustin Meeker, Timothy Nelson and Jesse Messer were correctional officers; Heather Schween was a psychologist; and Donna Mayhew was a nurse.

The events giving rise to plaintiff's claim occurred on July 8 and July 9, 2017. On the afternoon of July 8, at approximately 2:20 p.m., Keys told correctional officers Meeker and Hanson that he was having thoughts of committing self-harm and requested to be placed on clinical observation. Both officers allegedly responded in a way that suggested they were not going to report Keys' complaint to a supervisor, stating "you and everyone else." (Compl. (dkt. #1) ¶ 14.) Keys then covered his window because that would usually prompt a correctional officer complaining to his supervisor. For the next two and a half hours, Meeker and Hanson knocked and asked him to uncover his window. Keys responded at least two times, "No, not until you get a white shirt." (*Id.* ¶ 15.) At some point, Keys began biting his wrist, causing him to bleed. At around 4:50 p.m., he informed these correctional officers that he was bleeding and they then looked in his cell and saw

¹ In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously, resolving ambiguities and making reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

the blood.

Shortly after this, Keys was pulled out in cuffs, taken to the unit interview room and was seen by non-defendant nurse Denise Valerius and defendant Captain Hinton. Hinton told Keys that no one had informed him of his threats of self-harm. Keys asked to be placed on observation status. For reasons that are not clear, Keys refused care from Valerius. Hinton told him that he had called the on-call psychologist defendant Dr. Heather Schween, which Keys alleges he did not believe because Hinton had not left the room. Hinton told Keys that Schween had told him *not* to put Keys on suicide watch. He then took photos of Keys' left wrist, but did not take photos of his cell. After this, Hinton took Keys back to his cell and told him, "I suggest you not do anything else stupid tonight!" (*Id.* ¶ 19.) Keys alleges that he told Hinton that he did not feel safe and again asked to be placed on observation status, but Hinton ignored him, escorting him back to his cell.

Around 11:00 p.m., Keys asked defendant Timothy Nelson, a correctional officer conducting rounds, to notify a white shirt that he was having thoughts of self-harm and wanted to be placed on observation status. Nelson allegedly responded, "Let me see you do it, go ahead, do it." (*Id.* ¶ 21.) Keys responded by covering his cell window with tissue, eventually filling it with blood from his wrist injury. Nelson then returned and started beating on his door, demanding that Keys remove the bloody tissue from his window. Keys responded by telling him to go get a supervisor to place me on observation status and a nurse to address his bleeding. Nelson then started "talking tough" to Keys and cursing at him. He also turned off the water in Keys' cell.

Around 12:10 a.m., now the next day, defendant Sergeant Preston Lunon came to

Keys' cell and asked him what was going on. Keys told him what had happened and Lunon allegedly laughed in response and then demanded that Keys uncover his window. Keys again responded that he would not do that until a lieutenant and nurse came to his cell. Keys continued to engage in self harm and allegedly used the blood from his wrist to write about the incident on the wall. At some point, Nelson returned, and demanded Keys uncover his window, and again Keys told him to "get lost." (*Id.* ¶ 28.)

At some point, however, Keys did uncover his window because he had bled a lot and was continuing to bleed, alleging that his blood had soaked through a bed sheet, two towels and was covering his floor, toilet sink and walls. At 4:30 a.m., Nelson came to his cell again and saw the blood and allegedly said, "oh my fucking God Keys, what the fuck did you do?" (*Id.* ¶ 29.) He then left to tell Sergeant Lunon. Keys alleges that he then passed out and was awakened by Nelson, who attempted to strike a deal with Keys involving Keys cleaning up the blood and Nelson bringing Lieutenant Anderson and a nurse to see him. Keys declined the deal.

At 6:30 a.m., breakfast was served by correctional officers Nelson and Messer, with Messer seeing and commenting on the amount of blood. Keys alleges that his breakfast was delivered in such a way as to limit his ability to gain access to the outer portion of his cell. At about 7:30 a.m., inmates on the same tier began yelling to defendant nurse Donna Mayhew about Keys' bleeding and that he was in need of medical attention. Keys called for her as well. Mayhew came to his cell and allegedly said, "my God Mr. Keys, why'd you go and do all that?" (*Id.* ¶ 33.) Keys showed her his wrist, which was still bleeding. Nurse Mayhew told him that she was leaving to retrieve Nurse Valerius, but Mayhew never

returned.

Around 9:10 that morning, non-defendant Sergeant Craft was conducting rounds and saw Keys and the condition of his cell. Craft told him that no one had informed him of this issue. Keys was pulled out of his cell and taken to the unit interview room where he again met with Captain Hinton and Nurse Valerius. Valerius could not stop the bleeding, so Keys was transported to the hospital for treatment. He reports that he received stitches and still has a “huge” scar from his self-harm. (*Id.* ¶ 37.) When he returned to Columbia a few hours later, he was placed on suicide watch.

As for defendant Schween, Keys alleges that she was the on-call psychologist on July 8, and July 9, 2017, but that she never came to see him, instead apparently relying on a non-medical staff member to determine that he should not be placed on observation status. Keys further alleges that there is a practice where “white shirts” persuade psychological staff to not place inmates on observation status because it creates more work for them, with the requirement of conducting a safety check every five minutes. (*Id.* ¶ 40.)

Keys also alleges that he named unit manager Lindsey Walker as a defendant because “she’s been the segregation unit manager for 4 years now and has done absolutely nothing to help fix the negligence of her staff when dealing with and responding [to] mental health crisis appropriately and professional[ly],” and that she refuses to investigate complaints and provide better training. (*Id.* ¶ 41.)

OPINION

Plaintiff seeks to pursue an Eighth Amendment claim against defendants based on their failure to respond to his threats of self-harm and failure to provide appropriate

medical treatment. An inmate may prevail on a claim under the Eighth Amendment by showing that the defendant acted with “deliberate indifference” to a “substantial risk of serious harm” to his health or safety. *Farmer*, 511 U.S. at 836. Significant self-harm constitutes “serious harm.” See *Minix v. Canarecci*, 597 F.3d 824, 831 (7th Cir. 2010). Deliberate indifference to a risk of self-harm is present when an official is subjectively “aware of the significant likelihood that an inmate may imminently” harm himself, yet “fail[s] to take reasonable steps to prevent the inmate from performing the act.” *Pittman ex rel. Hamilton v. Cty. of Madison, Ill.*, 746 F.3d 766, 775-76 (7th Cir. 2014) (citations omitted); see also *Rice ex rel. Rice v. Corr. 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.”).

Here, as detailed above, plaintiff alleges that defendants Hinton, Lunon, Hansen, Meeker, Nelson and Messer were either aware of his threats to commit self-harm and/or witnessed his wrist injury and the blood generated from that injury and failed to respond to these threats by informing supervisors and/or securing medical attention. These allegations are sufficient to support an Eighth Amendment deliberate indifference claim against these individuals.

As for Nurse Mayhew, plaintiff alleges that she saw the blood and failed to return with Nurse Valerius, send Valerius to Keys’ cell or otherwise provide medical care. Perhaps the record will reflect that she reported Keys’ injury and Valerius or others did not respond, but drawing all reasonable inferences in Keys’ favor, the court will infer the Mayhew failed to follow-through with her promise to secure care, and, therefore, will also allow plaintiff

leave to pursue an Eighth Amendment deliberate indifference claim against her as well.

As for Dr. Schween, while Keys alleges that she was the on-call psychologist during the night of this incident, he also alleges that he did not believe Captain Hinton when he told him that he had called Dr. Schween and she had told him not to place Keys on observation status, and he further alleges that correctional staff purposely downplay the seriousness of inmates' mental health conditions in order to avoid placement of inmates on observational status, which is a strain on staff resources. Based on these allegations, plaintiff has not stated an Eighth Amendment deliberate indifference claims against Schween. If during the court of this case, he discovers evidence to support a finding that Schween was aware of Keys' threats and acts of self-harm and failed to respond, then plaintiff may seek leave to amend his complaint to add her as a defendant.

As for defendant Lindsey Walker, the doctrine of respondeat superior does not apply in the § 1983 context, so she cannot be held liable for her subordinates' conduct simply because she is their supervisor. *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir.2001). Thus, to maintain a claim against the supervisory defendants, Keys must allege facts showing Walker had sufficient personal responsibility in the unconstitutional conduct. Said another way, the facts must support a finding that she "directed the conduct causing the constitutional violation, or . . . it occurred with [her] knowledge or consent." *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001). Here, Keys' allegations permit a reasonable inference that Walker was aware of inadequate responses by her staff to mental health needs and failed to provide sufficient training or supervision. The court, therefore, will allow plaintiff to proceed against her, but plaintiff should be aware of the

difficulty in proving such a claim.

Finally, as for former DOC Secretary Litscher and Warden Dittman, however, plaintiff fails to include any allegations at all about either in his complaint, and specifically fails to allege any facts to satisfy the personal involvement requirement. *See Minix*, 597 F.3d at 833-34 (“[I]ndividual liability under § 1983 requires ‘personal involvement’ in the alleged constitutional deprivation.”). Accordingly, the court will deny him leave to proceed as to those two defendants.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Louis Keys is GRANTED leave to proceed on an Eighth Amendment deliberate indifference claim against defendants Lindsey Walker, Shane Hinton, Preston Lunon, Henry Hansen, Dustin Meeker, Timothy Nelson, Jesse Messer, and Donna Mayhew.
- 2) Plaintiff is DENIED leave to proceed against defendants Heather Schween, Jon E. Litscher and Michael Dittman. These defendants are dismissed from this lawsuit.
- 3) 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.
- 4) 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.
- 5) Pursuant to an informal 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 defendants. Under the agreement, the Department of Justice will have 60 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 the defendants.

- 6) 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.
- 7) Plaintiff's letter requesting a status update and a conference call for emergency screening (dkt. #19) is DENIED AS MOOT.

Entered this 27th day of April, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge