

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

KENNETH W. PENDLETON,

Plaintiff,

v.

DANE COUNTY JAIL,

Defendant.

OPINION & ORDER

Case No. 18-cv-701-wmc

Pro se plaintiff Kenneth Pendleton filed this lawsuit under 42 U.S.C. § 1983 against the Dane County Jail, related to an incident in which his arm was caught in a cell door, jail employee Tilleson further trapped his arm and a nurse later failed to provide him with medication or refer him to a doctor for examination. Since Pendleton failed to name a suable defendant, on April 24, 2019, the court issued an order dismissing this lawsuit without prejudice but giving him until May 15, 2019, to submit an amended complaint that identified suable defendants. (4/24/2019 Order (dkt. #13) at 5.) Pendleton has filed a document indicating that he would like to substitute as defendants officers Bolvin and Tilleson as well as Jane Doe, the nurse that failed to treat him after his injury. (Dkt. #14.) Construing that document as a motion to amend his complaint to substitute those defendants, the court will grant that motion and allow plaintiff to proceed against Tilleson and Doe, but not Bolvin.

OPINION

In its prior order, the court observed that plaintiff's allegations supported claims against Tilleson and Doe under either the Fourteenth or Eighth Amendment:

As currently pled, it appears that plaintiff could state a claim against both Tilleson and the nurse as defendants, regardless of the relevant legal standard. Indeed, it appears that Tilleson may have responded unreasonably when he opened the door while plaintiff's arm was in it. Additionally, even though plaintiff visited a nurse after the injury, his allegations suggest that the nurse who saw him did not provide him any medication or treatment, even though he went to see the nurse multiple times, each time complaining about pain and requesting be seen at a hospital.

(4/24/19 Order (dkt. #13) 5.) For those reasons, the court will grant him leave to proceed against Tilleson and the nurse, Jane Doe. However, the court will not grant plaintiff leave to proceed against Bolvin, whose only involvement in the incident was that he tried to push the door *off* plaintiff's arm while it was stuck in the door. (*See* Compl. (dkt. #1) 2.) Bolvin's apparent attempt to help plaintiff does not support a reasonable inference that he acted either unreasonably or with deliberate indifference to the risk that plaintiff would suffer serious harm. Accordingly, while plaintiff will be allowed to proceed against Tilleson and Doe, the court will dismiss Bolvin.

ORDER

1. Plaintiff Kenneth Pendleton's motion to amend his complaint to add Tilleson, Bolvin and Doe as defendants (dkt. #14) is GRANTED IN PART AND DENIED IN PART.
2. Plaintiff is GRANTED leave to proceed on constitutional claims against defendant Tilleson and Nurse Jane Doe, as provided above, and for reasons explained in the court's prior order (dkt. #13). The clerk's office is directed to substitute defendant Dane County Jail for defendants Tilleson and Doe.

3. Plaintiff is DENIED leave to proceed on any other claim, and defendant Bolvin is DISMISSED.
4. The clerk's office will prepare a summons and the U.S. Marshal Service shall effect service upon defendants.
5. Defendant Jane Doe shall not be served until plaintiff identifies Doe and amends his complaint accordingly.
6. 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 defendant. 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.
7. 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.
8. 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 9th day of March, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge