

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

MATTHEW LABREC,

Plaintiff,

v.

OPINION & ORDER

C.O. DUSTIN MEEKER, C.O. HANSEN,
C.O. II KORDUCKI, SGT. PHILLIPS, LT.
JULSON, RN JESSE BEAVER, and JOE DOE,

17-cv-485-jdp

Defendants.

Pro se plaintiff Matthew LaBrec is a prisoner in the custody of the Wisconsin Department of Corrections, currently housed at the Columbia Correctional Institution (CCI). LaBrec has filed a complaint alleging that CCI staff did not help him when he was having suicidal thoughts and attempting to kill himself. The court determined that LaBrec qualifies for *in forma pauperis* status, and LaBrec paid the initial partial filing fee set by the court.

The next step is for the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. When screening a pro se litigant's complaint, the court construes the allegations liberally and in the plaintiff's favor. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After considering LaBrec's allegations, I will grant him leave to proceed against defendants.

ALLEGATIONS OF FACT

I draw the following facts from LaBrec's complaint. Dkt. 1.

On January 27, 2017, LaBrec told unidentified CCI officers that he was going to kill himself; the officers alerted C.O. II Preston (not a defendant). Preston arrived to speak with LaBrec, and LaBrec told him that he was going to hang himself and showed him a noose that he had fashioned from a towel. Preston talked LaBrec down; LaBrec agreed that he would not hurt himself until he had the chance to speak with a "white shirt." *Id.* at 4. ("White shirts" are higher-ranked correctional officers.) LaBrec gave Preston the noose.

Lieutenant Julson arrived (presumably a "white shirt"). LaBrec told him that he wanted to kill himself. Julson told LaBrec to "hang in there until Monday" and that he would receive help then. *Id.* LaBrec told Julson that he would not make it until then, but Julson said that there was nothing he could do. LaBrec covered the window to his cell and told Julson to call an ambulance. Julson walked away. Then LaBrec bit his left arm, to try to kill himself.

C.O. Hansen, C.O. Meeker, Sergeant Phillips, and C.O. II Korducki arrived and told LaBrec to uncover his window. LaBrec responded by telling them that it was too late, that they should call an ambulance, and that he was killing himself. This back-and-forth went on for some time. The officers never attempted a "wellness check" or tried to enter LaBrec's cell to intervene. Then Julson arrived, but another inmate told Julson that he did not have to worry about LaBrec. So Julson left "never having gained a visual" of LaBrec. *Id.* at 6.

Eventually it was time for the officers to pass out "bedtime meds." *Id.* Hansen asked LaBrec to uncover his window if he wanted his medication. LaBrec told him that dead people don't need medication. Hansen continued on his way. Soon Jesse Beaver, a CCI nurse, and Meeker arrived to administer other medication. Meeker asked LaBrec if he wanted his

medication. LaBrec told him that he did not need his medication because he was killing himself. Meeker replied, “Okay, sounds good,” and left. *Id.*

Soon after, LaBrec bit through a large vein in his arm, causing his blood to “squirt[] in a stream” and form large puddles on the floor. *Id.* at 7. Another inmate began to kick his cell door to get the officers’ attention. Officers arrived, placed LaBrec in restraints, and called an ambulance.

LaBrec alleges that he has a history of mental illness and self-harm and that “CCI is aware of this.” *Id.* at 4.

ANALYSIS

LaBrec brings Eighth Amendment and common law negligence claims against defendants. LaBrec alleges that Meeker, Hansen, Korducki, Phillips, Julson, and Beaver were deliberately indifferent to his substantial risk of serious harm when they failed to intervene and did not perform a wellness check or “get a visual” on LaBrec.

A. Eighth Amendment

“A § 1983 claim based upon a violation of the Eighth Amendment has both an objective and a subjective element: (1) the harm that befell the prisoner must be objectively, sufficiently serious and a substantial risk to his or her health or safety, and (2) the individual defendants were deliberately indifferent to the substantial risk to the prisoner’s health and safety.” *Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006). Attempted suicide or self-harm satisfies the objective element: “[i]t goes without saying that suicide is a serious harm.” *Id.* (quoting *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001)). To satisfy the subjective prong, the plaintiff must allege that the defendant knew that the prisoner faced a substantial risk of committing

suicide and intentionally disregarded that risk. *Id.* at 761. A prison official is deliberately indifferent if he “knew of a serious danger to [the prisoner] (really knew—not just should have known, which would be all that would be required in a negligence case) and could easily have prevented it from materializing but failed to do so[.]” *Case v. Ahitow*, 301 F.3d 605, 605 (7th Cir. 2002); *see also Farmer v. Brennan*, 511 U.S. 825, 829 (1994) (Deliberate indifference requires “a showing that the official was subjectively aware of the risk.”). “[P]rison officials have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies.” *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 665 (7th Cir. 2012).

Here, LaBrec alleges that all six named defendants—Meeker, Hansen, Korducki, Phillips, Julson, and Beaver—knew that LaBrec was attempting to kill himself and deliberately disregarded the risk he posed to himself. LaBrec told all six defendants what he was thinking and planning to do. All six did nothing. That is enough to state a claim. I will allow LaBrec to proceed on an Eighth Amendment claim against all six named defendants.

B. Negligence

Federal courts may exercise supplemental jurisdiction over state-law claims that are so related to the federal claim that “they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). LaBrec brings a state-law negligence claim that mirrors his Eighth Amendment claim. LaBrec alleges that he has complied with Wisconsin’s notice-of-claim statute, Wis. Stat. § 893.82, so I will screen the claim.

To state a claim for negligence under Wisconsin law, a plaintiff must allege “(1) [a] duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury.” *Martindale v. Ripp*, 2001 WI 113, ¶ 33, 246 Wis. 2d 67, 629 N.W.2d 698 (quoting *Rockweit by Donohue v.*

Senecal, 197 Wis. 2d 409, 541 N.W.2d 742, 747 (1995)). Here, LaBrec alleges that all six named defendants had a duty to ensure his safety: the correctional officers had a duty to keep LaBrec safe as an inmate, and Beaver had a duty to intervene as a medical professional. Defendants breached their respective duties when they were deliberately indifferent to LaBrec's risk of self-harm and failed to intervene, and that breach caused LaBrec's injuries. That is enough to state a common-law negligence claim against all six named defendants. I will allow LaBrec to proceed.

C. Doe defendant

LaBrec does not allege any facts that implicate an unidentified officer or other participant, so the court will dismiss the Doe defendant.

ORDER

IT IS ORDERED that:

1. Plaintiff Matthew LaBrec is GRANTED leave to proceed on Eighth Amendment and common-law negligence claims against defendants C.O. Dustin Meeker, C.O. Hansen, C.O. II Korducki, Sgt. Phillips, Lt. Julson, and RN Jesse Beaver.
2. Defendant John Doe is DISMISSED.
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. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 40 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 defendants.
4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If he is unable to use 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 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 his failure to prosecute it.

Entered August 23, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge