

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

DECTOR ROBINSON,

Plaintiff,

v.

OPINION and ORDER

NURSE HENTZ and NURSE HULSTEIN,

19-cv-258-jdp

Defendants.

Plaintiff Dector Robinson, appearing pro se, is an inmate at Jackson Correctional Institution. Robginson alleges that defendant nurses Hentz and Hulstein, both employees of the prison, refused to give him treatment when he suffered strokes.

The next step is for me to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In screening any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). For the reasons explained below, I will allow Robinson to proceed on Eighth Amendment medical care and state-law medical malpractice claims against both defendants.

ALLEGATIONS OF FACT

I draw the following facts from Robinson's complaint, Dkt. 1, and accept them as true at the screening stage.

On October 2, 2018, the left side of Robinson's body went numb, and Robinson felt like he was choking on his tongue. Robinson asked another inmate for help. The inmate

contacted an officer, and the officer brought Robinson to the Health Services Unit in a wheelchair.

At the Health Services Unit, Robinson was examined by defendant nurses Hentz and Hulstein. Robinson told the nurses that his body was going numb and that he was choking on his tongue. The nurses told Robinson that he only had a migraine and they refused to send him to the hospital.

More than six hours later, Robinson was finally examined by a prison doctor. The doctor immediately recognized Robinson's symptoms as the "classic signs of a stroke" and sent Robinson to the emergency room. Dkt. 1, at 4. The hospital determined that Robinson had indeed suffered from several strokes.

As a result of the strokes, Robinson suffered brain damage and severe nerve damage on the right side of his body, resulting in extreme pain in his right arm and leg.

ANALYSIS

Robinson says that Hentz and Hulstein violated federal law and committed medical practice. With regards to the federal claim, I take Robinson to be saying that defendants violated his constitutional rights under the Eighth Amendment.

A. Eighth Amendment claims

The Eighth Amendment prohibits prison officials from acting with deliberate indifference to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). To state a deliberate indifference claim, Robinson must allege that each defendant was aware of a serious medical need and consciously failed to take reasonable measures to help him. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). A serious medical need is a condition

that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584–85 (7th Cir. 2006). Delay in treatment may constitute deliberate indifference if the delay unnecessarily prolongs the prisoner’s pain. *Smith v. Knox Cty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012).

I will grant Robinson leave to proceed on Eighth Amendment claims against both defendants. Robinson says that he exhibited the “classic signs of a stroke.” At the screening stage, I can infer that defendants knew from Robinson’s symptoms that he was likely having a stroke but decided to ignore those symptoms. As a result, Robinson went more than six hours without treatment. And at this stage, I can also infer that if Robinson had been treated sooner, he would have suffered less severe damage from the strokes.

B. Medical malpractice claims

Under Wisconsin law, a claim for medical malpractice, “as all claims for negligence, requires the following four elements: (1) a 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.

For the reasons I allowed Robinson to proceed on Eighth Amendment claims against defendants, I will also allow him to proceed on medical malpractice claims against them. His allegations that they ignored his stroke symptoms is sufficient to state a claim that they breached their duty of care.

ORDER

IT IS ORDERED that:

1. Plaintiff Dector Robinson is GRANTED leave to proceed on Eighth Amendment deliberate indifference and Wisconsin-law medical malpractice claims against defendants Nurse Hentz and Nurse Hulstein.
2. 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 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 defendants.
3. 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 or lawyers 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.
4. 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.
5. 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 them.

Entered July 31, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge