

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

JASON D. WANDICK,

Plaintiff,

v.

OPINION and ORDER

ANDREW WIERSMA, HEATHER SCHWEEN,
JANE DOE, and JOHN DOE,

24-cv-531-jdp

Defendants.

Plaintiff Jason D. Wandick, proceeding without counsel, is a prisoner currently incarcerated at Wisconsin Resource Center. Wandick alleges that when he was incarcerated at Columbia Correctional Institution, defendant staff did not take seriously his statements that he was suicidal, leading him to attempt hanging himself and becoming seriously injured. Wandick has made an initial partial payment of the filing fee as directed by the court.

The next step is for me to screen Wandick's complaint and dismiss any portion that is legally frivolous or 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 doing so, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). I conclude that Wandick may proceed with claims that defendants violated the Eighth Amendment to the United States Constitution by failing to protect him from harming himself.

ALLEGATIONS OF FACT

Plaintiff Jason D. Wandick suffers from depression and post-traumatic stress disorder. On July 21, 2023, Wandick told defendant Sergeant Andrew Wiersma that he was depressed and that he was going to hang himself.

A few hours later, Wandick spoke with defendant psychologist Heather Schween at his cell door. Wandick told her that he still felt suicidal. Schween wanted to speak further with Wandick at his cell door but he told her that he was uncomfortable speaking about his mental health issues in front of the other inmates in his unit. Schween told Wandick that if he wanted to speak with someone that he should fill out a request slip. Wiersma came to his cell and told Wandick that he would give him a request form at dinner time. Schween and Wiersma left Wandick's cell without following prison rules that required them to take a suicidal prisoner out of his cell for a safety assessment, nor did they place him in observation status.

Once Wandick was alone, he used his bedsheet as a noose and attempted to hang himself. Officers pulled him down. He suffered a seizure. He was rushed to the hospital for treatment. Wandick now suffers from dysphasia caused by a brain injury.

ANALYSIS

A. Wandick's claims

Wandick contends that defendants Wiersma and Schween violated the Eighth Amendment by failing to protect him from harming himself. Under the Eighth Amendment, a claim that prison staff failed to prevent a prisoner from harming himself has three elements: (1) there was a strong likelihood that the prisoner would seriously harm himself in the near future; (2) staff knew of that strong likelihood; and (3) staff consciously failed to take

reasonable measures to prevent the prisoner from harming himself. *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650 (7th Cir. 2012). I conclude that Wandick states Eighth Amendment claims against Wiersma and Schween for leaving him in his cell instead of taking other action to ensure that he wouldn't harm himself.

He also names John and Jane Doe as defendants, but he does not include any allegations against these defendants so I will dismiss them from the case.

B. Recruitment of counsel

Wandick moves for appointment of counsel, stating that a state court has found him not competent to represent himself in postconviction proceedings. Dkt. 2. Litigants in civil cases do not have a constitutional right to counsel, and I do not have the authority to appoint counsel to represent a plaintiff in a civil matter. Rather, I can only assist in recruiting counsel who may be willing to serve voluntarily. *See* 28 U.S.C. § 1915(e)(1); *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007) (en banc).

Generally, to show that it is appropriate for the court to recruit counsel, a plaintiff must meet three requirements. *Santiago v. Walls*, 599 F.3d 749, 760–61 (7th Cir. 2010). The first two of these requirements are that the litigant must show that he cannot afford counsel and that he has made reasonable efforts to locate an attorney on his own. Wandick has met these requirements.

The third requirement is that the plaintiff must demonstrate that his case is one of those relatively few in which it appears from the record that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt*, 503 F.3d at 654–55. The court must decide for each case “whether this particular prisoner-plaintiff, among many deserving and not-so-deserving others, should be the beneficiary of the limited resources of lawyers willing to respond

to courts' requests." *McCaa v. Hamilton*, 893 F.3d 1027, 1036 (7th Cir. 2018) (Hamilton, J., concurring). Wandick states that he has been appointed counsel for his postconviction hearings and that he had the assistance of a fellow prisoner in drafting his complaint. But it is too early in this litigation to tell whether the case will truly boil down to issues too complex for Wandick. This court generally defers decisions regarding recruitment of counsel at least until the deadline has passed for the defendant to file a motion for summary judgment on the ground that the plaintiff failed to exhaust his administrative remedies. Because defendants have the burden to show that Wandick didn't properly complete the exhaustion process, and because issues about exhaustion are usually simpler than a case's merits, counsel is almost always unnecessary at this early stage.

I will deny Wandick's motion for recruitment of counsel. If he continues to believe that he is unable to litigate the lawsuit himself as the case progresses, then he may renew his motion, but he will have to explain what specific litigation tasks he cannot perform himself.

ORDER

IT IS ORDERED that:

1. Plaintiff Jason D. Wandick is GRANTED leave to proceed on Eighth Amendment claims against defendants Wiersma and Schween.
2. The remaining defendants are DISMISSED from the case.
3. Plaintiff's motion for the court's assistance in recruiting him counsel, Dkt. 2, is DENIED without prejudice.
4. The court expects the parties to treat each other and the court with respect. Any abusive or threatening comments or conduct may result in sanctions, including entry of judgment against the offending party.
5. 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 the defendants.

6. 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.
7. 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.
8. 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 November 21, 2024.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge