UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LOUIS C. KEYS,
Plaintiff,

v. **Case No. 18-C-924**

SHERIFF JOHN MATZ, *et al*.,
Defendants.

ORDER

Plaintiff Louis C. Keys filed a complaint under 42 U.S.C. § 1983, alleging that defendants violated his civil rights. Docket No. 1. This matter comes before me on plaintiff's motion for leave to proceed without prepayment of the filing fee, plaintiff's motion to appoint counsel, and for screening of the complaint. Docket Nos. 1-2, 9.

The Prison Litigation Reform Act ("PLRA") applies to this action because plaintiff was incarcerated when he filed this complaint. 28 U.S.C. §1915. The law allows an incarcerated plaintiff to proceed with a lawsuit in federal court without pre-paying the $350 filing fee. *Id*. The plaintiff must comply with certain requirements, one of which is to pay an initial partial filing fee. *Id*.

On June 20, 2018, Magistrate Judge William Duffin waived the initial partial filing fee because plaintiff neither had the assets nor the means to pay the amount. Docket No. 6. Judge Duffin instructed plaintiff to notify the court, on or before July 11, 2018, if he wanted to voluntarily dismiss the case to avoid the possibility of incurring a strike under 28 U.S.C. § 1915(g). *Id.* at 3. Plaintiff did not voluntarily dismiss the case. Therefore, I will grant plaintiff's motion for leave to proceed without prepayment of the filing fee and will screen the complaint.

The PLRA requires that I screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I can dismiss an action or portion thereof if the claims alleged are “frivolous or malicious,” fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

To state a claim under the federal notice pleading system, plaintiff must provide a "short and plain statement of the claim showing that [he] is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). The complaint need not plead specific facts, and need only provide "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). “Labels and conclusions” or a "formulaic recitation of the elements of a cause of action” will not do. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

The factual content of the complaint must allow me to “draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Allegations must “raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Factual allegations, when accepted as true, must state a claim that is “plausible on its face.” *Iqbal*, 556 U.S. at 678.

I follow the two-step analysis set forth in *Twombly* to determine whether a complaint states a claim. *Id.* at 679. First, I determine whether the plaintiff’s legal conclusions are supported by factual allegations. *Id*. Legal conclusions not support by facts “are not entitled to the assumption of truth." *Id.* Second, I determine whether the well-pleaded factual allegations “plausibly give rise to an entitlement to relief." *Id*. *Pro*

se allegations, "however inartfully pleaded," are given a liberal construction. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

FACTS

Plaintiff is an inmate at the Columbia Correctional Institution ("CCI"). Docket No. 1, ¶ 3. Defendant John Matz is Sheriff of the Winnebago County Jail ("WCJ"); Kirk Schend is a Captain at WCJ; and CO Clayton is a Deputy at WCJ. *Id*., ¶¶ 4-6.

On June 21, 2017, Schend and Clayton went to CCI to transport plaintiff to WCJ for a court hearing scheduled for the next day. *Id*., ¶¶ 8-12. Plaintiff, who was shackled at the wrist, waist, and ankles, was placed into the van but no one secured his seatbelt. *Id*., ¶¶ 8, 13. Plaintiff states that it is prison policy to secure a seatbelt when traveling in a vehicle. *Id*., ¶ 13.

During the ride from CCI to WCJ, Clayton drove "carelessly" and "recklessly" even though plaintiff asked him to be careful. *Id.*, ¶¶ 14-16. At one point, Clayton slammed on the brakes and plaintiff hit his head against the van door. *Id*., ¶ 17. Plaintiff briefly blacked out. *Id*. When plaintiff regained consciousness, his vision was blurry, his head was pounding, he had ringing in his ears, and he felt like vomiting. *Id*., ¶¶ 18-19. Someone opened the back door and told plaintiff that he would be examined once they all arrived at WCJ. *Id*., ¶ 18.

At WCJ, Nurse Carrie examined plaintiff and concluded that he had a concussion; she gave him medication and an ice bag. *Id*., ¶¶ 20-21. Plaintiff asked several different individuals at WCJ for an inmate grievance form to report the incident, but his requests were denied. *Id*., ¶ 22. Later that night, Nurse Carrie examined plaintiff

again and she gave him more pain medication. *Id*., ¶ 23.

The next morning, plaintiff felt worse and vomited. *Id*. Plaintiff went to his court hearing and the judge ordered a two-week continuance so that plaintiff could seek medical attention. *Id*., ¶ 24. In the elevator ride after the hearing, plaintiff lost his ability to focus and he couldn't feel his legs. *Id*., ¶ 25. The deputies helped him into a "bull pen" so he could lie down for a few minutes to regain focus. *Id*.

Once back at WCJ, plaintiff had to wait for his transportation back to CCI. *Id*., ¶ 26. A male nurse examined plaintiff and gave him some pain medication. *Id*. The nurse told plaintiff that he would be back at CCI before the jail's "on-call" doctor showed up that day, so plaintiff should see a doctor at CCI. *Id*.

Once back at CCI, plaintiff was again examined by a nurse, and the nurse told plaintiff that he would be scheduled for a doctor's appointment. *Id*., ¶ 27. The nurse told plaintiff that he would receive medication "4x daily" until the doctor's appointment. *Id*.

On July 6, 2017, plaintiff was back at WCJ for the re-scheduled hearing. *Id*., ¶ 28. Plaintiff again asked several different individuals at WCJ for an inmate grievance regarding the June 21 driving incident; they all ignored his requests and made rude and sarcastic statements about the incident. *Id.*, ¶¶ 29-34. Plaintiff believes that jail staff denied him the grievance forms to prevent him from filing a lawsuit. *Id*., ¶ 34. Plaintiff also wrote to Matz about the incident several times but Matz did not respond. *Id*., ¶¶ 35, 37-38. For relief, he seeks declaratory relief, injunctive relief, and monetary damages. *Id.*, ¶¶ 45-51.

ANALYSIS

To state a claim for relief under 42 U.S.C. § 1983, plaintiff must allege that defendants: 1) deprived him of a right secured by the Constitution or laws of the United States; and 2) acted under color of state law. *Buchanan-Moore v. Cnty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) (citing *Kramer v. Vill. of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)); *see also Gomez v. Toledo*, 446 U.S. 635, 640 (1980).

Liability under § 1983 is predicated on a defendant's personal involvement in the constitutional deprivation. *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). "An official satisfies the personal responsibility requirement of section 1983…if the conduct causing the constitutional deprivation occurs at [his] direction or with [his] knowledge and consent." *Id*. (quoting *Crowder v. Lash*, 687 F.2d 996, 1005 (7th Cir. 1982)). He "must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye." *Id*. (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988)).

The Eighth Amendment prohibits jail officials from showing "deliberate indifference" to a substantial risk of serious harm to inmate health or safety. *Farmer v. Brennan*, 511 U.S. 825, 829, 836-38 (1994). Jail officials act with deliberate indifference when they know of a substantial risk of serious harm and either act or fail to act in disregard of that risk. *Roe v. Elyea*, 631 F.3d 843, 857 (7th Cir. 2011).

Plaintiff states that someone (either Clayton and Schend) failed to secure his seatbelt. He then told Clayton to drive carefully and Clayton ignored the request. Instead, Clayton slammed on the brakes and plaintiff severely injured his head. Accordingly, plaintiff may proceed with a claim that Clayton and Schend showed deliberate indifference towards plaintiff's health and safety during the ride from CCI to

WCJ. *See Williams v. Wisconsin Lock & Load Prisoner Transports, LLC,* 2016 WL 4124292, at *3 (N.D. Ill. Aug. 3, 2016)(concluding that failure to secure a seatbelt coupled with intentional reckless driving could constitute a constitutional violation).

Plaintiff states that Matz failed to ensure that jail staff followed jail policy during transportation of inmates. Plaintiff, however, does not allege that he told Matz that there was a problem regarding inmate transportation prior to the incident or that Matz otherwise knew there was a problem and turned a blind eye. Plaintiff only told Matz about the problem after the incident, when Matz could not intervene to resolve the problem. These allegations do not show that Matz knew about the risk to his safety and deliberately disregarded it.

To the extent plaintiff complained to Matz about denial of inmate grievances, denial of inmate grievances does not violate the constitution. *Perales v. Bowlin*, 644 F. Supp. 2d 1090, 1101 (N.D. Ind. 2009) (concluding that an inmate "has no Constitutional right to file grievances at the institution in which he is confined."); *see also Antonelli v. Sheahan*, 81 F.3d 1422, 1430–31 (7th Cir. 1996) ("[A]ny right to a grievance procedure is a procedural right, not a substantive one."). Therefore, I will dismiss Matz from the action based on failure to state a claim upon which relief can be granted.

Plaintiff also filed a motion to appoint counsel. Docket No. 2. He explains that his incarceration will significantly limit his ability to litigate the case, he has limited knowledge of the law/access to the law library, and the case will likely involve conflicting testimony. *Id.*

In a civil case, I have discretion to recruit counsel to represent a litigant who is unable to afford one. *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013); 28 U.S.C. §

1915(e)(1); *Ray v. Wexford Health Sources, Inc*., 706 F.3d 864, 866-67 (7th Cir. 2013). Once a plaintiff demonstrates he has made a reasonable attempt to secure counsel on his own, I examine "whether the difficulty of the case – factually and legally – exceeds the particular plaintiff's capacity as a layperson to coherently present it." *Navejar*, 718 F.3d at 696 (citing *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007)). This inquiry focuses not only on a plaintiff's ability to try his case, but also includes other "tasks that normally attend litigation" such as "evidence gathering" and "preparing and responding to motions." *Id*.

Based on plaintiff's filings so far, I have no reason to believe that he cannot coherently present his case. His writing is clear and organized; he is able to describe what happened to him; and he is able to explain why he believes it violated his rights.

Further, almost all incarcerated plaintiffs ask for appointment of counsel and there aren't enough volunteer lawyers in the community to appoint one for everyone who asks. Plaintiff chose to bring this lawsuit, therefore, he must at least attempt to litigate it for as long as he is able. In the section below, I will order defendants Schend and Clayton to file a responsive pleading to the complaint. If and when they file an answer, I will issue a scheduling order with further instructions on how to proceed with the case. The order will include instructions on how to conduct discovery and file dispositive motions. Plaintiff need not worry about "conflicting testimony" at this point in the litigation. If plaintiff needs more time in the law library, he can file a motion for an extension of time on any future deadline.

At this point in the litigation, I have no reason to believe that plaintiff cannot coherently present his case. Therefore, I will deny his motion to appoint counsel.

CONCLUSION

For the reasons stated, **IT IS ORDERED** plaintiff's motion for leave to proceed without prepayment of the filing fee (Docket No. 9) is **GRANTED.** The agency having custody of plaintiff shall collect from his institution trust account the **$350.00** balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds $10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If the plaintiff is transferred to another institution, county, state, or federal, the transferring institution shall forward a copy of this Order along with plaintiff's remaining balance to the receiving institution.

IT IS ORDERED that Sheriff John Matz is **DISMISSED** from the action.

IT IS ORDERED that plaintiff's motion to appoint counsel (Docket No. 2) is **DENIED**.

IT IS ORDERED that the United States Marshal shall serve a copy of the complaint and this order on Kirk Schend and CO Clayton under Federal Rule of Civil Procedure 4. Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). Although Congress requires the court to order service by the U.S. Marshals Service, it has not made any provision for either the court or the U.S. Marshals Service to waive these fees. The current fee for waiver-of-service packages is $8.00 per item mailed. The full fee schedule is provided at 28

C.F.R. §§ 0.114(a)(2), (a)(3). The U.S. Marshals will give the plaintiff information on how to remit payment. The court is not involved in collection of the fee.

IT IS ORDERED that Kirk Schend and CO Clayton file a responsive pleading to the complaint.

IT IS ORDERED that the parties may not begin discovery until after the court enters a scheduling order setting deadlines for discovery and dispositive motions.

IT IS ORDERED that plaintiff mail all correspondence and legal material to:

Office of the Clerk
United States District Court
Eastern District of Wisconsin
362 United States Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE JUDGE'S CHAMBERS. It will only delay the processing of the case.

Plaintiff is advised that, if he fails to file documents or take other required actions by the deadlines the court sets, the court may dismiss the case based on his failure to prosecute. The parties must notify the clerk of court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties.

Dated at Milwaukee, Wisconsin, this 13th day of September 2018.

s/Lynn Adelman
LYNN ADELMAN
District Judge