UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RONNIE L. FAMOUS,

Plaintiff,

v.

JOE JELWINSKI, CARLO GAANAN, LATOYA LORIA, and MELISSA MITCHELL,

Defendants.

Case No. 20-CV-510-JPS

ORDER

Plaintiff Ronnie L. Famous, an inmate confined at Columbia Correctional Institution, filed a *pro se* complaint under 42 U.S.C. § 1983 alleging that the defendants violated his rights under federal and state law. (Docket #1). This order resolves Plaintiff's motion for leave to proceed without prepaying the filing fee and screens his complaint.

1. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE

The Prison Litigation Reform Act ("PLRA") applies to this case because Plaintiff was a prisoner when he filed his complaint. *See* 28 U.S.C. § 1915(h). The PLRA allows the Court to give a prisoner plaintiff the ability to proceed with his case without prepaying the civil case filing fee. 28 U.S.C. § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the $350 filing fee over time, through deductions from his prisoner account. *Id.*

On April 23, 2020, the Court ordered Plaintiff to pay an initial partial filing fee of $1.21. (Docket #6). Plaintiff paid that fee on May 4, 2020. The Court will grant Plaintiff's motion for leave to proceed without prepaying

the filing fee. (Docket #2). He must pay the remainder of the filing fee over time in the manner explained at the end of this order.

2. FEDERAL SCREENING STANDARD

Under the PLRA, the Court must screen complaints brought by prisoners seeking relief from a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint if the prisoner raises claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, the Court applies the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or the laws of the United States, and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799

F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). The Court construes *pro se* complaints liberally and holds them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

3. PLAINTIFF'S ALLEGATIONS

Plaintiff was incarcerated at the Wisconsin Resource Center ("WRC") during the relevant events. (Docket #1 at 2). Defendant Joe Jelwinski ("Jelwinski") is a patient care technician at WRC and Defendants Carlo Gaanan ("Dr. Gaanan") and Latoya Loria ("Dr. Loria") are doctors at WRC. (*Id.* at 2). Defendant Melissa Mitchell ("Mitchell") is a Health Services Unit ("HSU") supervisor at WRC. (Collectively, ("Defendants")).

On December 24, 2019, after Plaintiff was served several bad meals that made him sick, he asked Jelwinski to inform his unit supervisor that Plaintiff needed to talk with him and also inform the unit psychologist that Plaintiff needed to talk with her because he was going to hurt himself. (*Id.* at 3–4). Jelwinski refused to inform the unit psychologist about the self-harm emergency. (*Id.* at 4). Plaintiff covered his cell window and told Jelwinski that he was going to hurt himself. (*Id.*) Jelwinski said go ahead and walked away from Plaintiff's cell. (*Id.*) Jelwinski came back to Plaintiff's cell four times while Plaintiff was karate chopping the steel desk in his cell with his left hand, injuring himself. (*Id.*) Plaintiff's actions injured his pinky finger on his left hand, leaving it deformed and causing him pain. (*Id.*)

Plaintiff was taken to see Dr. Gaanan for his left hand. (*Id.*) Dr. Gaanan ordered an X-ray and taped two of Plaintiff's fingers together to try and straighten the pinky finger back into place. (*Id.*) Dr. Gaanan also ordered an ice bag and ibuprofen pain medication to Plaintiff for the

following week. (*Id.*) Dr. Gaanan told Plaintiff that someone would see him to follow up. (*Id.*) However, no one followed up with Plaintiff. (*Id.* at 5).

Plaintiff's pain medication ran out and his condition worsened. (*Id.* at 5). Plaintiff asked to see the doctor and was seen by Dr. Loria on January 30, 2020. (*Id.*) Dr. Loria showed Plaintiff an image of the tendons in his pinky finger and informed him that the tendons are damaged, which is causing his pinky finger to be crooked and preventing it from bending. (*Id.*) Dr. Loria also told Plaintiff that she would not order surgery right now because they do not operate on only pinky fingers. (*Id.*) If Plaintiff had injured his other fingers or his thumb, they would order surgery. (*Id.*) Dr. Loria advised Plaintiff that surgery is expensive and that he should use his other good fingers and keep using the ibuprofen for his pain. (*Id.*) Upset about Dr. Loria's medical care, Plaintiff complained to Mitchell, an HSU supervisor at WRC. (*Id.* at 2–3). Mitchell refused to do anything about Plaintiff's worsening condition. (*Id.* at 5).

Plaintiff alleges that the condition of his pinky finger is worsening. (*Id.*) He can no longer fully bend and grip with it like he could before the injury. (*Id.* at 6). His finger hurts constantly and the ibuprofen does not stop the pain completely. (*Id.*) Plaintiff states that he will suffer permanent serious impairment to his finger if it remains untreated. (*Id.*) Plaintiff claims that he is suffering emotional and physical pain as a result of the Defendants refusal to adequately treat his injury. (*Id.*) He states that he would be free from this unnecessary infliction of pain if Defendants would refer him to a specialist who could repair his damaged finger tendons. (*Id.*)

4. ANALYSIS

4.1 Eighth Amendment

Plaintiff has alleged two different claims under the Eighth Amendment. The first is against Jelwinski for deliberate indifference to Plaintiff's serious medical need, his risk of self-harm and/or suicide. The second, is against Dr. Gaanan, Dr. Loria, and Mitchell for deliberate indifference to Plaintiff's serious medical need, the injury to his left pinky finger. For the reasons stated below, Plaintiff may proceed on both claims.

4.1.1 Defendant Jelwinski

Plaintiff has stated a claim against Jelwinski for deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. Claims for deliberate indifference to an inmate's suicide risk are legion in federal courts, and so extensive case law has developed to interpret them. The basic formulation of the claim involves an objective and a subjective component. *Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006). First, Plaintiff must show that the harm (or potential harm) was objectively, sufficiently serious and a substantial risk to his health. *Id.*; *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). "It goes without saying that 'suicide is a serious harm.'" *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001) (quoting *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261 (7th Cir. 1996)). It is not clear that Plaintiff karate chopping a steel table could have actually led to his death. Nevertheless, in light of the low level of scrutiny applied at the screening stage, the Court can infer that the risk of harm was sufficiently serious.

Second, Plaintiff must establish that the defendants displayed deliberate indifference to his risk of self-harm and/or suicide. *Collins*, 462 F.3d at 761; *Sanville*, 266 F.3d at 733. This, in turn, requires a dual showing that the defendants (1) subjectively knew that the inmate was at substantial risk of committing suicide and (2) were deliberately indifferent to that risk.

Matos ex rel. Matos v. O'Sullivan, 335 F.3d 553, 556 (7th Cir. 2003). In this case, Plaintiff told Jelwinski that he was going to hurt himself and that he should notify the psychological staff about an emergency. According to Plaintiff, Jelwinski told him to "go ahead" and refused to notify the psychological staff about his plan to self-harm. Additionally, Plaintiff covered his cell window and engaged in self-harm while Jelwinski came by his cell several times, and Jelwinski never intervened or notified the psychological staff. Therefore, the Court finds that Plaintiff has alleged enough to state a claim that Jelwinski was deliberately indifferent to his serious medical need, risk of self-harm and/or suicide, in violation of the Eighth Amendment.

4.1.2 Defendants Dr. Gaanan, Dr. Loria, and Mitchell

The Eighth Amendment secures an inmate's right to medical care. Prison officials violate this right when they "display deliberate indifference to serious medical needs of prisoners." *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (quotation omitted). To sustain this claim, Plaintiff must show: (1) an objectively serious medical condition; (2) that Defendants knew of the condition and was deliberately indifferent in treating it; and (3) this indifference caused him some injury. *Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010). An objectively serious medical condition is one that "has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Hayes v. Snyder*, 546 F.3d 516, 522 (7th Cir. 2008). The deliberate indifference inquiry includes two components: the official must have subjective knowledge of the risk to the inmate's health, and the official also must disregard that risk. *Id.* Negligence cannot support a claim of deliberate indifference, nor is medical malpractice a constitutional violation. *Estelle v.*

Gamble, 429 U.S. 97, 105–06 (1976); *Roe v. Elyea*, 631 F.3d 843, 857 (7th Cir. 2011). To show that a delay in providing treatment is actionable under the Eighth Amendment, Plaintiff must also provide evidence that the delay exacerbated his injury or unnecessarily prolonged his pain. *Petties v. Carter*, 836 F.3d 722, 730–31 (7th Cir. 2016).

In light of the low bar applied at the screening stage, the Court finds that Plaintiff's allegations state a claim for deliberate indifference to a serious medical condition in violation of the Eighth Amendment. Plaintiff's claims that he has damaged his tendons in his pinky finger sufficiently allege a serious medical condition. Plaintiff also adequately alleges that Defendant knew about his medical issue and did little about it; telling Plaintiff that someone would follow up with him, but never doing so, and that they would not schedule surgery for his pinky finger despite his pain and deformity. Thus, Plaintiff's complaint sufficiently states a claim for deliberate indifference to a serious medical condition in violation of the Eighth Amendment against Dr. Gaanan and Dr. Loria.

The claims against Mitchell are slightly less clear. Individual liability under § 1983 "requires personal involvement in the alleged constitutional deprivation." *Colbert v. City of Chi.*, 851 F.3d 649, 657 (7th Cir. 2017) (quoting *Minix v. Canarecci*, 597 F.3d 823, 833 (7th Cir. 2010)). As Mitchell was the supervisor at HSU, she was presumably the supervisor of Dr. Gaanan and Dr. Loria. To be liable under § 1983, a supervisory defendant "must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye." *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). At the screening stage, the Court finds that Plaintiff has sufficiently alleged that Mitchell was made aware of the situation and she refused to help get Plaintiff additional

medical care. Thus, Plaintiff has stated a claim against Mitchell for deliberate indifference in violation of the Eighth Amendment.

4.2 Negligence

Additionally, Plaintiff seeks to proceed on a negligence claim. To sustain a claim for medical malpractice, as with all negligence claims, Plaintiff must allege "(1) a breach of (2) a duty owed (3) that results in (4) an injury or injuries, or damages." *Paul v. Skemp*, 625 N.W.2d 860, 865 (Wis. 2001). "In short, a claim for medical malpractice requires a negligent act or omission that causes an injury." *Id.* The Court may exercise supplemental jurisdiction over any negligence claims that are related to the federal constitutional violations. 28 U.S.C. § 1367. Here, Plaintiff's negligence claims arise from the same conduct that both of his Eighth Amendment violations do. Thus, for the reasons previously stated, (*see* Section 4.1, *supra*), Plaintiff has sufficiently alleged a claim of negligence against all Defendants.

5. CONCLUSION

In light of the foregoing, the Court finds that Plaintiff may proceed on the following claims pursuant to 28 U.S.C. § 1915A(b):

Claim One: Deliberate indifference to Plaintiff's serious medical needs, risk of self-harm and/or suicide, in violation of the Eighth Amendment, against Jelwinski;

Claim Two: Deliberate indifference to Plaintiff's serious medical needs, in violation of the Eighth Amendment, against Dr. Gaanan, Dr. Loria, and Mitchell; and

Claim Three: Negligence, pursuant to Wisconsin state law, against all Defendants.

Accordingly,

IT IS ORDERED that Plaintiff's motion for leave to proceed without prepaying the filing fee (Docket #2) be and the same is hereby **GRANTED**;

IT IS FURTHER ORDERED that under an informal service agreement between the Wisconsin Department of Justice and this Court, a copy of the complaint and this order have been electronically transmitted to the Wisconsin Department of Justice for service on Defendants Joe Jelwinski, Carlo Gaanan, Latoya Loria and Melissa Mitchell;

IT IS FURTHER ORDERED that under the informal service agreement, those defendants shall file a responsive pleading to the complaint within sixty (60) days;

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect from his institution trust account the $348.79 balance of the filing fee by collecting monthly payments from Plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to Plaintiff'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 case. If Plaintiff is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this order along with his remaining balance to the receiving institution;

IT IS FURTHER ORDERED that a copy of this order be sent to the officer in charge of the agency where Plaintiff is confined;

IT IS FURTHER ORDERED that the Clerk's Office mail Plaintiff a copy of the guides entitled "Answers to Prisoner Litigants' Common Questions" and "Answers to Pro Se Litigants' Common Questions," along with this order; and

IT IS FURTHER ORDERED that plaintiffs who are inmates at Prisoner E-Filing Program institutions[1] must submit all correspondence and case filings to institution staff, who will scan and e-mail documents to the Court. Plaintiffs who are inmates at all other prison facilities must submit the original document for each filing to the court to the following address:

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 matter.

Plaintiff is further advised that failure to make a timely submission may result in the dismissal of this case for failure to diligently pursue it. In addition, 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 3rd day of December, 2020.

BY THE COURT:

J. P. Stadtmueller
U.S. District Judge

[1]The Prisoner E-Filing Program is mandatory for all inmates of Columbia Correctional Institution, Dodge Correctional Institution, Green Bay Correctional Institution, Oshkosh Correctional Institution, and Waupun Correctional Institution, Wisconsin Secure Program Facility.