

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GREG DUGAS,

Plaintiff,

vs.

Civil Action 2:15-CV-67
Judge Sargus
Magistrate Judge King

BRIAN WITTRUP,

Defendant.

OPINION AND ORDER

Plaintiff, an inmate currently incarcerated at the Chillicothe Correctional Institution ("CCI"), brings this action under 42 U.S.C. § 1983 against Brian Wittrup,¹ Chief of the Bureau of Classification for the Ohio Department of Rehabilitation and Corrections ("ODRC"), alleging that defendant was deliberately indifferent to a serious risk of harm to plaintiff's safety in violation of plaintiff's constitutional rights. This matter is now before the Court on plaintiff's request for leave to amend his complaint, presented in his reply in support of his motion for interim injunctive relief, ECF 9 ("*Motion to Amend*").

In October 2014, while plaintiff was incarcerated at the Belmont Correctional Institution ("BeCI"), an inmate who was allegedly part of a gang known as the "Bloods," demanded that plaintiff hold drugs for him. *Complaint*, ECF 1, pp. 4-5. Plaintiff alleges that, after he

¹ The Ohio Attorney General has made an appearance on behalf of defendant Wittrup who has not yet been served with process. ECF 5, p. 1 (citing O.R.C. § 109.361).

received the drugs, which had a "prison street value of three-thousand dollars[,] " he flushed them down the toilet. *Id.* at 5. Plaintiff later testified against the inmate. *Id.* The inmate's security level was increased and he was transferred to a higher security facility. *Id.* Plaintiff contends that, as a result of his testimony against a gang member and to protect him against retaliatory attacks from fellow gang members at BeCI, he believed that he would be awarded protective control status. *Id.* at 5-6, 12, 14. However, plaintiff was not granted that status, but he was transferred to the general population at CCI. *Id.*; *Motion to Amend*, p. 8. On November 8, 2014, five days after his arrival at CCI, plaintiff alleges that the following incident occurred:

[W]hile at the Chillicothe facilities' game room (pool hall), while playing pool, three black inmates walked to the door of the game room asking for "Missouri" - which was Dugas' known nickname at the Belmont facility - but Dugas had not told anyone at the Chillicothe facility that his home state or his nickname was "Missouri," so fortunately for Dugas he was not identified by the three black inmates.

When they left, Dugas casually asked the individual he was playing pool with who they were and the individual he was playing pool with said they were Blood "enforcers" and that he didn't know who "Missouri" was but he wouldn't want to be "Missouri."

Complaint, p. 15. Plaintiff's subsequent refusal to lockdown in his regular assigned area was construed as a request for protective control. *Id.* at 15-16. Plaintiff provided a sworn statement "of the events" to CCI's protective control committee, but his request was denied. *Id.* at 16. His administrative appeal from that decision was also denied. *Id.*

On January 7, 2015, plaintiff filed the *Complaint* pursuant to 42 U.S.C. § 1983. Although plaintiff's *Complaint* and supporting declaration are difficult to follow, he appears to allege that defendant Wittrup was deliberately indifferent to a substantial risk of serious harm to plaintiff when this defendant denied plaintiff's request for protective control status and left plaintiff in CCI's general population. Plaintiff also alleges that the State of Ohio's classification and transfer policies are flawed, creating unsafe environments in its facilities. Plaintiff seeks, *inter alia*, an order directing defendant to re-classify plaintiff to protective control status and to transfer him to an institution with such protection; plaintiff also seeks punitive damages in the amount of \$250,000.00. *Complaint*, pp. 9-10.

Plaintiff now asks to amend the *Complaint* to joint two new defendants and to amend his request for punitive damages. *Motion to Amend*, pp. 7-14. Although Rule 15(a) provides that a "court should freely grant leave [to amend] when justice so requires[,]" see Fed. R. Civ. P. 15(a)(2), the grant or denial of a request to amend a complaint is left to the broad discretion of the trial court. *Gen. Elec. Co. v. Sargent & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990). In exercising its discretion, the trial court may consider such factors as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *Foman v. Davis*, 371

U.S. 178, 182 (1962). "A proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss." *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000) (citing *Thiokol Corp. v. Dep't of Treasury, Revenue Div.*, 987 F.2d 376, 382-83 (6th Cir. 1993)). A plaintiff's proposed claim therefore "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level" *Id.* A court must therefore dismiss a complaint - and deny leave to amend a complaint as futile - if the complaint does not plead "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570.

In the case presently before the Court, plaintiff's proposed amendments are futile. Plaintiff first seeks to add as defendants BeCI "Caseworker Ruiz" and CCI "Caseworker Shane Stevens" *Motion to Amend*, pp. 7-13. Plaintiff claims that these caseworkers were deliberately indifferent to his safety when they recommended denying his request for protective control status despite knowing about an alleged threat of gang retaliation against him. *Id.* This Court disagrees. For the reasons previously articulated in the *Order and Report and Recommendation*, ECF 13, pp. 10-14, plaintiff has not met the objective prong of his deliberate indifference claim. Moreover, where plaintiff has not alleged that these caseworkers were aware of facts that plaintiff faced a substantial risk of serious harm or that

these caseworkers drew such an inference, plaintiff cannot satisfy the subjective prong of his claim. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 830, 837 (1994). For example, plaintiff concedes that Caseworker Ruiz investigated the drug incident at BeCI involving plaintiff and an alleged member of the Bloods gang and recommended that plaintiff be transferred to another facility. *Motion to Amend*, pp. 8-9.

Similarly, Caseworker Stevens investigated plaintiff's request for protective control status at CCI. *Id.* at 10-11. In other words, far from ignoring plaintiff's safety concerns, these caseworkers took steps to ensure plaintiff's safety. For all these reasons, plaintiff's proposed deliberate indifference claims against Caseworkers Ruiz and Stevens are futile. Finally, in light of this conclusion, the Court also concludes that plaintiff's request to increase his punitive damages claim from \$250,000.00 to one million dollars is likewise without merit.

WHEREUPON, plaintiff's request for leave to amend the complaint, ECF 9, is **DENIED**.

February 2, 2015

s/Norah McCann King
Norah McCann King
United States Magistrate Judge