

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

TRAVANTI SCHMIDT,

Plaintiff,

v.

SERGEANT REYNOLDS,

Defendant.

OPINION AND ORDER

13-cv-810-wmc

Plaintiff Travanti Schmidt is an inmate incarcerated by the Wisconsin Department of Corrections at the Wisconsin Secure Program Facility. Plaintiff filed this proposed action pursuant to 42 U.S.C. § 1983, concerning an injury that he sustained while in custody. He has been found eligible to proceed *in forma pauperis* and he has made an initial, partial payment of the filing fee in this case.

Because plaintiff is incarcerated, the court is required by the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, to screen the proposed complaint and dismiss any portion that is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks money damages from a defendant who is immune from such relief. In addressing any *pro se* litigant’s complaint, the court must read the allegations generously, reviewing them under “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, the court must deny leave to proceed further and dismiss this case for reasons set forth below.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

On an unspecified date, Schmidt was assigned to Echo Unit cell #124, where he slipped and fell. Schmidt explains that Sergeant Reynolds was supervising the showers at the time. After finishing his shower, Schmidt alleges the hot water suddenly came on, striking Schmidt in the face and causing him to fall.

As a result, Schmidt allegedly injured the left side of his foot, for which he was treated by a nurse, who gave him an ice pack and Ibuprofen for pain. Schmidt was also placed under clinical observation because he was so upset about the incident.

Schmidt contends that his foot still causes him pain. He seeks compensatory damages for his injury and further evaluation by a physician.

OPINION

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege -- at a minimum -- the violation of a right protected by the Constitution and laws of the United States. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *see also Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009) (reciting the elements required to make a claim under § 1983). Assuming that all of plaintiff's allegations are true, and extending all reasonable inferences, Schmidt still alleges *at most* that defendant Reynolds was somehow negligent in supervising whoever turned on the hot water again (or really stretching for a claim, Schmidt did so himself) without warning, but negligence or even gross negligence will not support a constitutional

violation. See *Daniels v. Williams*, 474 U.S. 327, 332-33 (1986); *Rosario v. Brawn*, 670 F.3d 816, 821 (7th Cir. 2012); see also *Marsh v. Jones*, 53 F.3d 707, 712 (5th Cir. 1995) (concluding that slip-and-fall resulting from leaking air conditioner was not actionable under § 1983 because defendant's conduct amounted only to negligence). Similarly, Schmidt's allegation of ongoing pain is insufficient to state a claim for deliberate indifference, particularly against this defendant, who played no role in his medical treatment.

Absent a constitutional violation, Schmidt fails to state a claim upon which relief may be granted for purposes of 42 U.S.C. § 1983.¹

ORDER

IT IS ORDERED that:

1. Plaintiff Travanti Schmidt's request for leave to proceed is DENIED and his complaint is DISMISSED with prejudice for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983.
2. The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g). (barring a prisoner with three or more "strikes" or dismissals for a filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 22nd day of December, 2014.

BY THE COURT:

/s/
WILLIAM M. CONLEY
District Judge

¹ The court expresses no opinion on the viability of any state law negligence claim that Schmidt might choose to pursue in state court, except that his allegations appear insufficient for even a negligence claim as currently pled.