

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

LAPONZA MONROE DALLAS,

Plaintiff,

v.

THE COUNTY OF MILWAUKEE,
DAVID CLARKE, Sheriff of Milwaukee,
Clinic Supervisor JOHN AND JANE DOES,
Clinic Doctors JOHN AND JANE DOES,
CHIEF JAILER, JANE DOE JAILER,
JAILER MARCHANT, MARY GUIMONT,
Public Defender, and ARMOR SERVICE,

Defendants.²

OPINION and ORDER

16-cv-720-bbc¹

Pro se prisoner and plaintiff Laponza Monroe Dallas has filed a complaint and two amended complaints about various issues related to his incarceration at the Milwaukee County jail and the Milwaukee County House of Correction. Dkt. #1, 4 and 6. In addition, he has filed a motion for leave to amend his complaint to add an IRS agent as a defendant. Dkt. #8. Later, plaintiff filed a motion to withdraw his two amended complaints and his request to add the IRS agent. Dkt. #9.

¹ Because Judge Crabb is on medical leave, I am issuing this order to prevent an undue delay in the progress of the case.

² Plaintiff named "Daivd Clark" as one of the defendants. I have amended the caption to reflect the correct spelling of that name.

Because plaintiff is a prisoner, I must screen his complaint in accordance with 28 U.S.C. § 1915(e)(2) and § 1915A. In light of plaintiff's request to disregard all pleadings other than the original complaint, I have not reviewed any of the amended complaints. As to the original complaint, I am granting plaintiff leave to proceed on his claim that defendants Milwaukee County, David Clarke and unknown jail staff are violating plaintiff's Eighth Amendment rights by failing to provide medical treatment for plaintiff's persistent vomiting. I am dismissing the remaining defendants.

OPINION

A. Restricted Filer Status

Before I can review the merits of any of plaintiff's claims, I must consider the effect of plaintiff's litigation history on this case. As plaintiff is well aware, he is a restricted filer for two reasons. First, he has filed three or more lawsuits or appeals that have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. E.g. Dallas v. Beecher, 98-cv-937 (E.D. Wis. Feb. 1, 1999); Dallas v. Cole, 97-cv-243, (E.D. Wis. May 27, 1997); Dallas v. Beecher, 97-cv-489 (E.D. Wis. May 23, 1997). These dismissals trigger the filing restrictions in 28 U.S.C. § 1915(g), which requires plaintiff to prepay the full filing fee unless he is in imminent danger of serious physical injury.

Second, the Court of Appeals for the Seventh Circuit has further sanctioned plaintiff because of his history of frivolous litigation, concluding that he may not file any new lawsuits in this circuit until he pays the filing fees he owes, Dallas v. Gamble, 2 F. App'x 563,

564 (7th Cir. 2001). Plaintiff still owes hundreds of dollars of filing fees in this district, so the sanction still applies until plaintiff can persuade the court of appeals to lift it. However, as plaintiff also knows, this court has construed the restriction imposed by the court of appeals the same way that § 1915(g) is written, which means that plaintiff is permitted to file a new lawsuit without paying his old filing fees if he is in imminent danger of serious physical injury. Dallas v. Gamble, 448 F. Supp. 2d 1020, 1026 (W.D. Wis. 2006).

B. Allegation of Persistent Vomiting

In his original complaint, plaintiff includes one allegation that supports a conclusion that he may be in imminent danger of serious physical injury. In particular, plaintiff alleges that he has been vomiting blood since February 2016, but staff at the Milwaukee County jail have refused to provide any treatment for him. That allegation is sufficient, both to overcome plaintiff's filing restrictions and to support the drawing of an inference that jail officials are disregarding a known serious medical need, in violation of the Eighth Amendment. Zaya v. Sood, 836 F.3d 800, 805 (7th Cir. 2016) (to prevail on claim under Eighth Amendment for inadequate medical care, plaintiff must show that he had serious medical need, that defendants were aware of need and that defendants consciously refused to take reasonable measures to help plaintiff receive treatment). See also Prude v. Clarke, 675 F.3d 732, 735 (7th Cir. 2012) (prisoner stated claim under Eighth Amendment by alleging that officials at Milwaukee County jail disregarded his persistent vomiting).

For reasons he does not explain, plaintiff does not appear to know the names of any

of the medical staff at the jail who were aware of his condition. Accordingly, I will allow plaintiff to proceed against defendant David Clarke. As the sheriff and plaintiff's custodian, it is ultimately Clark's responsibility to protect the health and safety of inmates at the Milwaukee County jail, so it is reasonable to infer at the pleading stage that Clarke may bear some responsibility for the alleged constitutional violation; if Clarke was not personally involved, he can make that argument in a motion for summary judgment. Duncan v. Duckworth, 644 F.2d 653, 655 (7th Cir. 1981) (“[Defendants]’ position as administrator of the prison hospital justifies the inference at this stage of the proceeding that he does bear some responsibility for the alleged misconduct. If he later disclaims knowledge and responsibility for the alleged misconduct, if he later disclaims knowledge and responsibility for the delay in treatment suffered by Duncan, he can readily identify those who were responsible.”).

After defendant Clarke files an answer to the complaint, the clerk of court will schedule a preliminary pretrial conference with Magistrate Judge Stephen Crocker. After that conference, plaintiff may conduct discovery to determine the identities of the unknown medical staff members who were involved in the alleged violation of his constitutional rights.

I will allow plaintiff to proceed against Milwaukee County as well. A municipality such as the county cannot be sued under § 1983 unless the country has policy, custom or widespread practice that caused the constitutional violation. Dixon v. County of Cook, 819 F.3d 343, 348 (7th Cir. 2016). Because plaintiff alleges that the failure to provide treatment has persisted for many months across many staff members, it is reasonable to infer at the

pleading stage that plaintiff may be able to meet that standard.

I acknowledge that defendant Clarke and any other defendants that are identified later likely work and reside in the Eastern District of Wisconsin rather than in this district. However, improper venue is an issue that can be waived by the defendants, Automobile Mechanics Local 701 Welfare & Pension Funds v. Vanguard Car Rental USA, Inc., 502 F.3d 740, 746 (7th Cir. 2007), so it is not generally an issue that this court raises on its own.

I am dismissing the complaint as to plaintiff's public defender, "Jailer Marchant" and "Armor Service." Plaintiff's public defender had no responsibility for providing medical care, and, in any event, cannot be sued for constitutional violation because she was not acting on behalf of the government. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Plaintiff does not mention the other two defendants anywhere in the body of his complaint, so he has not stated a claim upon which relief may be granted against them.

Before concluding, I would be remiss if I did not note the similarity between plaintiff's allegation of imminent danger in this case and claims that he has raised in the past. In both Dallas v. Gamble, No. 00-c-87-c (W.D. Wis.) and Dallas v. Bartow, No. 04-cv-347-c (W.D. Wis.), plaintiff alleged that he was experiencing stomach pain because prison officials were poisoning him. The court concluded that plaintiff's allegations of poisoning were too improbable to credit, even in the context of screening order. Later, plaintiff made three more attempts to file lawsuits in this court in which he made similar allegations, but the clerk of court returned the complaints to him in light of the decision of the court of appeals to bar plaintiff from filing new lawsuits until he paid all of his filing fees. Gamble,

448 F. Supp. 2d at 1023.

In light of these previous cases, if plaintiff alleged only that he was experiencing stomach distress, I likely would have dismissed this case as well. However, plaintiff's allegation that he is vomiting blood cannot be ignored. Accordingly, despite plaintiff's questionable litigation history, I will allow him to proceed. But if later factual developments reveal that plaintiff's allegations have no basis, I will not hesitate to revoke leave to proceed in forma pauperis and dismiss this case. E.g., Almond v. Pollard, No. 12-cv-259-bbc, 2013 WL 4591849, at *2 (W.D. Wis. Aug. 28, 2013).

C. Filing Fee

I have not yet assessed plaintiff an initial partial payment of the filing fee in accordance with 28 U.S.C. § 1915(b)(1). In most cases, I would not screen a prisoner's complaint until the court received that payment, but I make an exception to this rule when the prisoner is alleging imminent danger so that the case can proceed without unnecessary delay. E.g., Schuenke v. Wisconsin Dept. of Corrections, No. 13-cv-217-bbc, 2013 WL 2558251, at *3 (W.D. Wis. June 11, 2013); Bridges v. Cox, No. 10-cv-534-bbc, 2010 WL 4553663, at *4 (W.D. Wis. Nov. 3, 2010). This does not mean, however, that plaintiff is excused from complying with § 1915(b)(1). Accordingly, plaintiff will have to submit an initial partial payment of \$24.50 before the court can grant plaintiff any relief. In the meantime, I am sending plaintiff the procedures for filing a motion for a preliminary injunction, if that is something that plaintiff wishes to do.

ORDER

IT IS ORDERED that

1. Plaintiff Laponza Dallas is GRANTED leave to proceed on a claim that defendants Milwaukee County, David Clarke and unknown jail staff members are refusing to provide treatment for plaintiff's symptom of vomiting blood, in violation of the Eighth Amendment.

2. The complaint is DISMISSED as to all other defendants.

3. Plaintiff's motion to withdraw his request to amend his complaint to add Patricia Gonzalez as a defendant, dkt. #9, is GRANTED, and plaintiff's motion to amend his complaint, dkt. #8, is DENIED as moot. Plaintiff's original complaint, dkt. #1, remains the operative pleading.

4. Plaintiff is directed to make an initial partial payment of the filing fee in the amount of \$24.50. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to plaintiff's custodian regarding the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir.1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

5. A copy of the complaint, dkt. #1, a summons form and this order are being forwarded to the United States Marshal for service on defendant Clarke.

6. Once the defendant Clarke answers the complaint, the clerk of court will set a telephone conference before Magistrate Judge Stephen Crocker. At the conference,

Magistrate Judge Crocker will set a schedule for the case, including a deadline for amending the complaint to identify the names of the unknown medical staff members.

7. For the time being, plaintiff must send defendant Clarke a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or his attorney.

8. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

9. If plaintiff is transferred or released while this case is pending, it is his 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 case may be dismissed for failure to prosecute.

Dated January 5, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge