

APPENDIX A

U.S. DISTRICT COURT'S DISMISSAL FOR FAILURE TO STATE A CLAIM

DATED AUGUST 24, 2021

APPENDIX B

U.S. SIXTH CIRCUIT COURT OF APPEALS'

DENIAL, DATED MAY 5, 2022

APPENDIX C

U.S. SIXTH CIRCUIT COURT OF APPEALS’ DENIAL OF A REQUEST FOR REHEARING EN BANC, DATED JULY 14, 2022

APPENDIX D

DECLARATION OF STEVEN TRAPP

APPENDIX E

DOM 2020-30R6

APPENDIX F

POLICY DIRECTIVE 03.04.110 “CONTROL OF COMMUNICABLE DISEASES”

APPENDIX G

POLICY DIRECTIVE 01.04.110

“ADMINISTRATIVE RULES, POLICIES AND PROCEDURES”

21-2958

Mr. Steven Trapp
#770672
Marquette Branch Prison
1960 U.S. Highway 41, S.
Marquette, MI 49855

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 14, 2022

Mr. Steven Trapp
Marquette Branch Prison
1960 U.S. Highway 41, S.
Marquette, MI 49855

Re: Case No. 21-2958, *Steven Trapp v. Erica Huss, et al*
Originating Case No.: 2:21-cv-00185

Dear Mr. Trapp,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

Enclosure

No. 21-2958

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jul 14, 2022

DEBORAH S. HUNT, Clerk

STEVEN TRAPP,

Plaintiff-Appellant,

V.

ERICA HUSS, WARDEN, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Wm L. Hunt

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN TRAPP,

Plaintiff,

Case No. 2:21-cv-185

v.

Honorable Paul L. Maloney

ERICA HUSS et al.,

Defendants.

JUDGMENT

In accordance with the opinion issued this date:

IT IS ORDERED that Plaintiff's action is **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) and 1915A, and 42 U.S.C. § 1997e(c).

Dated: August 24, 2021

/s/ Paul L. Maloney

Paul L. Maloney

United States District Judge

Certified as a True Copy

By 

Deputy Clerk

U.S. District Court

Western Dist. of Michigan

Date 8-26-21

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN TRAPP #770672,

Plaintiff,

Case No. 2:21-cv-185

v.

Hon. Maarten Vermaat

ERICA HUSS, et al.,

Defendants.

NOTICE TO PLAINTIFF REGARDING CONSENT

This notice is to inform you that your case was filed on August 10, 2021 and has been assigned to Magistrate Judge Maarten Vermaat. In accordance with the provisions of 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73, you are hereby notified that the United States magistrate judges of this district court may, upon your consent, conduct any or all proceedings in this case, including a jury trial and entry of a final judgment. If you consent, any appeal from a judgment entered by a magistrate judge shall be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Magistrate judges have greater flexibility in their schedules than district judges, who have heavy criminal caseloads that take priority over civil trials. Accordingly, the magistrate judges are generally able to schedule prisoner civil rights cases for jury trial much sooner, and they are able to provide firm trial dates. Magistrate judges are experienced trial judges who handle a great number of prisoner civil rights cases.

Your decision to consent to the dispositive jurisdiction of a United States magistrate judge is entirely voluntary. If you do not consent to a magistrate judge, the case will be randomly assigned to a district judge. The magistrate judge already assigned to this case would continue to decide all pretrial matters and would handle all dispositive motions by report and recommendation.

CLERK OF COURT

Dated: August 10, 2021

By: /s/ S. Kivela
Deputy Clerk

The below JPay message was sent to MBP prisoners today, September 27, 2021.

- **Effective tomorrow, September 28, 2021, MBP will begin (rapid) antigen testing all staff and prisoners weekly, regardless of vaccination status.** Testing will be conducted a minimum of two weekly cycles and will continue until no positives have been detected for at least 14 days.

The mass testing for staff and prisoners is because the facility's wastewater has been being tested weekly by Northern Michigan University's Biology Department since late July as part of a county wide research study to aid in the early detection of COVID-19. Last week, for the first time since the wastewater sampling began in late July, the level of COVID-19 virus detected in MBP's wastewater sample exceeded the study's testing threshold; therefore, it has been suggested that staff and prisoners at the facility submit to mass testing.

Mass testing for staff and prisoners at MBP will be each Tuesday and Wednesday beginning this week (September 28 and 29).

NMU's Research Team will also be taking additional wastewater samples to coincide with the facility's testing dates to further assist with their research study.

The increased community spread throughout the state has already made the Department more cautious about transferring prisoners, so although the facility is not on outbreak status, very few transfers are likely to be approved.

United States District Court for the Western
District of Michigan

FILED - MQ

September 20, 2021 9:45 AM

Clerk of Court
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: slk / SL 9-20-21

STEVEN TRAPP #770672

Plaintiff,

vs.

CASE NO. 2:21-cv-00185-PLM-1

ERICA HUSS

PARTY # 1 HEALTH CARE UNIT MANAGER

Defendant.

NOTICE OF APPEAL

Notice is hereby given that STEVEN TRAPP #770672, hereby appeal
(here name all parties taking the appeal)

to the United States Court of Appeals for the Sixth Circuit from dismissal as frivolous, malicious or
(the final judgment) (from an

Failure to State a Claim entered in this action on the 24th day of
order (describing it))

October 2021

Steven TRAPP #770672

Address:

MSP 1960 US Hwy 41 South
Milwaukee, WI 53255

cc: Opposing Counsel X
Court of Appeals X

6CA-3
1/99

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN TRAPP,

Plaintiff,

Case No. 2:21-cv-185

v.

Honorable Paul L. Maloney

ERICA HUSS et al.,

Defendants.

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Marquette Branch Prison (MBP) in Marquette, Marquette County, Michigan. The

events about which he complains occurred at that facility. Plaintiff sues MBP Warden Erica Huss and an unknown party (Unknown Party #1) identified as the MBP Health Care Unit Manager.

Plaintiff alleges that on October 26, 2020, he sent kites to Defendants because he was suffering from COVID-19. Plaintiff complained because he had been given an “M.D.O.C. update which stated infected prisoners would be separated from non-infected prisoners and sent down[-]state for medical treatment.” (Compl., ECF No. 1, PageID.3.) That practice, Plaintiff reports, had been abandoned and, instead, he was left in an open environment where the virus was easily spread through the entire block by coughs and sneezes.

Plaintiff filed a grievance regarding the matter. (Grievance, ECF No. 1-1.) The Step I response is illegible, but Defendant Huss responded at Step II. Her response indicates that the grievance had been rejected at Step I because the grievance related to the entire prison population rather than specifically to Plaintiff. Plaintiff’s grievance presented the same claim he presents in his complaint. Plaintiff specifically contends in his grievance that he contracted the virus “[d]ue to the negligence of Warden Huss and the Health Care Unit Manager[.]” (*Id.*, PageID.7.)¹

Plaintiff seeks \$5,000,000 in damages.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include

¹ Plaintiff repeats his assertion that Defendants were negligent or neglectful in his statement of reasons for appeal at Step II and Step III of the grievance process. (*Id.*, PageID.8.)

more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “probability requirement,” . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); see also *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996): Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

III. Eighth Amendment violation

In his complaint, Plaintiff does not identify the constitutional right that he claims Defendants violated. In his grievance, however, as part of the Step III appeal statement, Plaintiff

alleges that Defendants actions (or inactions) constitute cruel and unusual punishment. (Grievance, ECF No. 1-1, PageID.8.)

The Eighth Amendment forbids cruel and unusual punishments and, therefore, imposes a constitutional limitation on the power of the states to punish those convicted of crimes. Punishment may not be “barbarous” nor may it contravene society’s “evolving standards of decency.” *Rhodes v. Chapman*, 452 U.S. 337, 345-46 (1981). The Amendment, prohibits conduct by prison officials that involves the “unnecessary and wanton infliction of pain.” *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987) (per curiam) (quoting *Rhodes*, 452 U.S. at 346). The deprivation alleged must result in the denial of the “minimal civilized measure of life’s necessities.” *Rhodes*, 452 U.S. at 347; *see also Wilson v. Yaklich*, 148 F.3d 596, 600-01 (6th Cir. 1998). The Eighth Amendment is only concerned with “deprivations of essential food, medical care, or sanitation” or “other conditions intolerable for prison confinement.” *Rhodes*, 452 U.S. at 348 (citation omitted). Moreover, “[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment.” *Ivey*, 832 F.2d at 954.

In order for a prisoner to prevail on an Eighth Amendment claim, he must show that he faced a sufficiently serious risk to his health or safety and that the defendant official acted with “‘deliberate indifference’ to [his] health or safety.” *Mingus v. Butler*, 591 F.3d 474, 479-80 (6th Cir. 2010) (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (applying deliberate indifference standard to medical claims)); *see also Helling v. McKinney*, 509 U.S. 25, 35 (1993) (applying deliberate indifference standard to conditions of confinement claims)). The deliberate-indifference standard includes both objective and subjective components. *Farmer*, 511 U.S. at 834; *Helling*, 509 U.S. at 35-37. To satisfy the objective prong, an inmate must show “that he is

incarcerated under conditions posing a substantial risk of serious harm.” *Farmer*, 511 U.S. at 834. Under the subjective prong, an official must “know[] of and disregard[] an excessive risk to inmate health or safety.” *Id.* at 837. “[I]t is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at 842. “It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.” *Id.* at 836. “[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted.” *Id.* at 844.

Plaintiff’s allegations, however, do not suffice to show deliberate indifference on the part of Defendants. Instead, he specifically alleges that Defendants were negligent. Allegations of negligence fall short of the deliberate indifference required to state an Eighth Amendment claim. *See Farmer*, 511 U.S. at 835 (holding that an Eighth Amendment violation requires a “state of mind more blameworthy than negligence”).

Moreover, Plaintiff does not make clear how these Defendants are responsible for the conditions he contends neglected his health and safety. Plaintiff alleges that he contracted the virus because the MDOC abandoned its initial plan to segregate infected prisoners and send them elsewhere. He does not tie that abandonment to the actions of either Defendant. Instead, Plaintiff alleges that he sent a kites to Defendants after he contracted the virus, to no avail, and that Defendant Huss upheld the rejection of his grievance.

Plaintiff fails to make specific factual allegations against Defendants, other than his claim that they failed to fix the problems he identified in his kites and grievance. Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior or vicarious liability. *Iqbal*, 556 U.S. at 676; *Monell v. New York City Dep’t*

of *Soc. Servs.*, 436 U.S. 658, 691(1978); *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). A claimed constitutional violation must be based upon active unconstitutional behavior. *Grinter v. Knight*, 532 F.3d 567, 575–76 (6th Cir. 2008); *Greene v. Barber*, 310 F.3d 889, 899 (6th Cir. 2002). The acts of one’s subordinates are not enough, nor can supervisory liability be based upon the mere failure to act. *Grinter*, 532 F.3d at 576; *Greene*, 310 F.3d at 899; *Summers v. Leis*, 368 F.3d 881, 888 (6th Cir. 2004). Moreover, § 1983 liability may not be imposed simply because a supervisor denied an administrative grievance or failed to act based upon information contained in a grievance. *See Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). “[A] plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676. Plaintiff has failed to allege that Defendants engaged in any active unconstitutional behavior. Accordingly, he fails to state a claim against them.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff’s complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). Although the Court concludes that Plaintiff’s claims are properly dismissed, the Court does not conclude that any issue Plaintiff might raise on appeal would be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Accordingly, the Court does not certify that an appeal would not be taken in good faith. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from

proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: August 24, 2021

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEVEN TRAPP,

Plaintiff,

Case No. 2:21-cv-185

Honorable Paul L. Maloney

v.

ERICA HUSS et al.,

Defendants.

_____ /

DEFICIENCY ORDER FOR NOTICE OF APPEAL

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court dismissed Plaintiff's action on August 24, 2021 (ECF Nos. 7, 8). Plaintiff has filed a notice of appeal. The filing fee for an appeal is \$505.00. Plaintiff has failed to pay the filing fee or to apply in the manner required by law to proceed *in forma pauperis*.

Under the provisions of the Prison Litigation Reform Act, if a prisoner wishes to proceed *in forma pauperis* on appeal, the prisoner must file in the district court a motion for leave to proceed *in forma pauperis*, a certified copy of a prisoner trust account statement, and an affidavit of indigence. 28 U.S.C. § 1915(a)(2); *McGore v. Wrigglesworth*, 114 F.3d 601, 609 (6th Cir. 1997), *overruled in other part by LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013). Plaintiff has failed to file the motion for leave to proceed *in forma pauperis*, a certified copy of a prisoner trust account statement, and an affidavit of indigence required to proceed *in forma pauperis*. Plaintiff is hereby notified of the foregoing deficiencies.

Plaintiff is informed that within 28 days from the date of this notice he must submit the \$505.00 filing fee or, alternatively, file the required documents to proceed *in forma pauperis*.

See McGore, 114 F.3d at 610. The affidavit must include a statement of all assets Plaintiff possesses, a statement that Plaintiff is unable to pay the fee or give security therefor, and a statement of the nature of the appeal. *See* 28 U.S.C. § 1915(a)(1) and (2). The affidavit must be in substantial compliance with Form 4 of the Federal Rules of Appellate Procedure. *See McGore*, 114 F.3d at 610. The trust account statement must be a certified copy and must be for the 6 months immediately preceding the filing of Plaintiff's notice of appeal. *See* 28 U.S.C. § 1915(a)(2).

Plaintiff is also notified that if he fails to pay the filing fee or to file the required documents as described above, the Court of Appeals may dismiss his appeal for failure to prosecute under Rule 3 of the Federal Rules of Appellate Procedure. *See McGore*, 114 F.3d at 610. In that case, this Court will assess the entire filing fee, which will be payable in full regardless of the previous dismissal. *See id.* In addition, the appeal will not be reinstated even if Plaintiff subsequently pays the filing fee or requests to proceed as a pauper. *See id.*

Dated: September 20, 2021

/s/ Maarten Vermaat

Maarten Vermaat
United States Magistrate Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

To: Clerk of the Court for
Western District of Michigan
Northern Division
229 Federal Building
P.O. Box 698
Marquette, Michigan 49855

From: Steven J. Trapp #770672
Plaintiff *in pro se*
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

Re: *Steven Trapp v. Erica Huss, et al*
Sixth Cir. Case No.: 21-2958
Dis. Ct. No.: 2:21-cv-00185
Hon. Paul L. Maloney

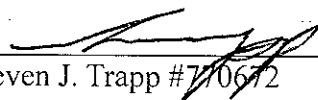
Dear Clerk;

Enclosed please find the original copy of my Motion to Proceed *In Forma Pauperis*.

Please file same in accordance with your court rules.

Sincerely,

Date: 10-12-21


Steven J. Trapp #770672

cc: File

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN TRAPP,

Plaintiff,

Case No. 2:21-cv-185

v.

Honorable Maarten Vermaat

ERICA HUSS et al.,

Defendants.

ORDER TO PROCEED *IN FORMA PAUPERIS*
AND FOR PAYMENT OF FILING FEE ON APPEAL

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court dismissed Plaintiff's action on August 24, 2021 (ECF Nos. 7, 8). Plaintiff has sought leave to proceed *in forma pauperis* on appeal. The Court has declined to certify that an appeal would not be taken in good faith. Accordingly, Plaintiff is eligible to proceed on appeal *in forma pauperis*. 28 U.S.C. § 1915(a)(3).

The fee for appealing a civil action is \$505.00. Plaintiff must pay a portion of the \$505.00 fee as an initial partial filing fee. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposit to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the notice of appeal. 28 U.S.C. § 1915(b)(1); *McGore*, 114 F.3d at 611. In this case, the average monthly deposit exceeds the average monthly balance. According to the certified copy of Plaintiff's prison trust account statement, Plaintiff had an average monthly deposit of \$470.39. Twenty percent of Plaintiff's average monthly deposit is \$94.07. Plaintiff shall remit \$94.07 as an initial partial filing fee within 28 days of the date of this order to the address listed at the end of this order. The check

or other form of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.

After Plaintiff has paid the initial partial filing fee, Plaintiff must also pay the remaining amount of the filing fee through monthly payments of 20 percent of the preceding month's income credited to Plaintiff's prison trust fund account. *See* 28 U.S.C. § 1915(b)(2). These payments will be forwarded by the agency having custody of Plaintiff to the Clerk of this Court each time the amount in Plaintiff's trust account exceeds \$10.00, until the filing fee is paid in full. *See* 28 U.S.C. § 1915(b)(2); *Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff's account is \$10.00 or less, no payment is required for that month. *See Hampton*, 106 F.3d at 1284-85.

In light of the foregoing, the Court orders the following:

IT IS ORDERED that leave to proceed *in forma pauperis* on appeal is **GRANTED** and within **28 days** hereof Plaintiff shall pay an initial partial filing fee of \$94.07 to the Clerk of this Court. **Plaintiff's failure to comply with this order may result in dismissal of this appeal without prejudice, however, such a dismissal will not negate Plaintiff's responsibility to pay the fee.**

IT IS FURTHER ORDERED that the agency having custody of Plaintiff shall collect the remainder of the filing fee. As outlined above, each month that the amount in Plaintiff's account exceeds \$10.00, the agency shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff's prisoner account until the entire remaining filing fee is paid.

Dated: November 19, 2021

/s/ Maarten Vermaat

Maarten Vermaat
United States Magistrate Judge

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

To: Clerk's Office: Attn: Deborah S. Hunt
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

From: Steven J. Trapp, Prison No. #770672
Plaintiff-Appellant, *Pro Se*
Marquette Branch Prison
1960 U.S. Highway 41 South
Marquette, Michigan 49855

Re: Case No. 21-2958, *Steven J. Trapp v. Erica Huss, et al*;
Originating Case No. 2:21-cv-185

Dear Ms. Hunt:

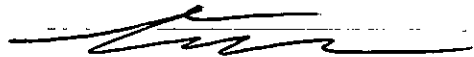
Please find for filing the original of Petitioner's Petition for a Hearing Rehearing En Banc.

Please take note that no defendants were ever served with the complaint being appealed. Please notify me if these documents are deficient in any way and I will make any necessary corrections as soon as possible.

Thank you for your cooperation in this matter.

Sincerely,

Date: 5-17-22




Steven J. Trapp, Prison No. #770672

Enclosures

cc: File

21-2958

Mr. Steven Trapp
#770672
Marquette Branch Prison
1960 U.S. Highway 41, S.
Marquette, MI 49855



**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: May 05, 2022

Mr. Steven Trapp
Marquette Branch Prison
1960 U.S. Highway 41, S.
Marquette, MI 49855

Re: Case No. 21-2958, *Steven Trapp v. Erica Huss, et al*
Originating Case No.: 2:21-cv-00185

Dear Mr. Trapp,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Antoinette Macon on behalf
of Roy G. Ford, Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Thomas Dorwin

Enclosure

Mandate to issue

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-2958

FILED
May 5, 2022
DEBORAH S. HUNT, Clerk

STEVEN TRAPP,

Plaintiff-Appellant,

v.

ERICA HUSS, et al.,

Defendants-Appellees.

Before: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Marquette.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

to continue living among other prisoners in an open-bar cell where the virus was easily transmitted. In his internal grievance, Trapp claimed that he contracted COVID-19 “[d]ue to the negligence of Warden Huss and the Healthcare Unit Manager.” He alleged that he was still being confined in the same cell block, where he was susceptible to contracting the virus again. Trapp characterized his treatment as a violation of both prison policy and the Eighth Amendment. Trapp sought \$5 million in damages.

Upon initial screening of the complaint under the Prison Litigation Reform Act (PLRA), *see* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c), the district court concluded that Trapp failed to state an Eighth Amendment deliberate-indifference claim against the defendants because he alleged only negligence on their part. Moreover, the court found that Trapp had not connected his illness to any action of the defendants. In that regard, the court observed that Trapp did not claim that the defendants were responsible for abandoning the policy to isolate infected prisoners and that he complained to the defendants only *after* he caught the virus. Finally, the court held that Trapp could not base his claim on respondeat-superior liability or the denial of his grievance. Consequently, having found that Trapp failed to allege facts demonstrating that the defendants engaged in unconstitutional behavior, the district court dismissed his complaint with prejudice.

On appeal, Trapp argues that, taken together, his complaint and grievance sufficiently stated an Eighth Amendment deliberate-indifference claim. Trapp has also filed an affidavit that supplies more facts in support of his claim, including allegations that, in September 2020, a group of prisoners was transferred to MBP from another prison, that at least two of the new prisoners were infected with COVID-19, and that these prisoners were allowed to commingle with other prisoners and prison staff, who then transmitted the virus throughout the prison. Trapp claimed that by not restricting the movement of the infected prisoners, the defendants violated MDOC Director’s Office Memorandum (DOM) 2020-30R6, which set forth new procedures for combatting the spread of COVID-19, among them a requirement to isolate prisoners who test positive for COVID-19 and all other prisoners who were in close proximity to such prisoners for more than 15 minutes.

We review de novo a district court's decision to dismiss a complaint under §§ 1915(e), 1915A, and 1997e. *Grinter v. Knight*, 532 F.3d 567, 571-72 (6th Cir. 2008). The PLRA "requires district courts to screen and dismiss complaints that are 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." *Id.* at 572 (citing 28 U.S.C. § 1915A(b)); *see also* 28 U.S.C. § 1915(e)(2)(B). We review the dismissal of claims at screening under the standard set out in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (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 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* To state a claim under § 1983, a plaintiff must allege that (1) a right secured by the Constitution or a federal statute has been violated, and (2) the violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). As a pro se litigant, Trapp is entitled to a liberal construction of his pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam).

A deliberate-indifference claim under the Eighth Amendment includes both an objective and a subjective prong: (1) the inmate "is incarcerated under conditions posing a substantial risk of serious harm" (the objective prong), and (2) "the official knows of and disregards an excessive risk to inmate health or safety" (the subjective prong). *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994). In *Wilson v. Williams*, 961 F.3d 829 (6th Cir. 2020), we stated that "the objective prong is easily satisfied" in this context, *id.* at 840. "The COVID-19 virus creates a substantial risk of serious harm leading to pneumonia, respiratory failure, or death." *Id.*

The subjective prong, on the other hand, generally requires alleging at least that the defendant "acted or failed to act despite his knowledge of a substantial risk of serious harm." *Id.* (quoting *Farmer*, 511 U.S. at 842). The official must have a "state of mind more blameworthy than negligence," *Farmer*, 511 U.S. at 835. The key inquiry is whether the defendants "responded reasonably to the risk posed by COVID-19." *Wilson*, 961 F.3d at 840-41. And a response may be

reasonable even if “the harm imposed by COVID-19 on inmates . . . ‘ultimately [is] not averted.’” *Id.* at 841 (quoting *Farmer*, 511 U.S. at 844).

We conclude that Trapp failed to plead a plausible deliberate-indifference claim. First, Trapp failed to state a plausible claim to the extent that he alleged that the defendants *negligently* failed to protect him from contracting COVID-19. *See Cameron v. Bouchard*, 815 F. App’x 978, 984-85 (6th Cir. 2020). Second, as the district court found, Trapp did not plead any facts that explained how each of the defendants violated his constitutional rights. *See Heyne v. Metro. Nashville Pub. Schs.*, 655 F.3d 556, 564 (6th Cir. 2011). The mere fact that the defendants allegedly failed to comply with the new MDOC regulation on isolating infected prisoners is insufficient to state a cognizable § 1983 claim. *See Stanley v. Vining*, 602 F.3d 767, 769 (6th Cir. 2010). Third, the district court correctly held that Trapp could not recover against the defendants under a respondeat-superior theory. *See Winkler v. Madison County*, 893 F.3d 877, 898 (6th Cir. 2018).

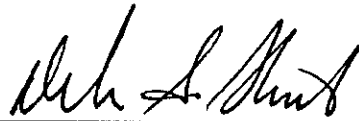
In addition to these overall § 1983 pleading deficiencies, Trapp failed to plead facts that satisfy the requisite subjective prong of a deliberate-indifference claim. Although Trapp alleged that the defendants abandoned the policy of transferring infected prisoners out of MBP for medical treatment, he failed to include other facts demonstrating that the defendants’ overall response to the risk presented by COVID-19 was unreasonable. *Cf. Wilson*, 961 F.3d at 844 (“[O]ur precedents do not require that prison officials take every possible step to address a serious risk of harm.”); *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 330 (3d Cir. 2020) (“[A] failure to eliminate all risk [does not] establish that the Government was deliberately indifferent to [the plaintiffs’] serious medical needs.”). And inasmuch as Trapp’s complaint indicates that the transfer policy was promulgated by the MDOC, it is not reasonable to infer that the decision to abandon the policy is attributable to the defendants.

Trapp’s additional allegations in his affidavit on appeal still do not satisfy the subjective prong of a deliberate-indifference claim. Trapp criticizes the defendants’ alleged failure to adhere to an MDOC policy’s requirement to isolate infected prisoners, he does not address the other mitigation measures outlined in the policy (which he attaches as an exhibit to his brief). These

policies include requirement for prisoners and staff to wear masks, the implementation of social-distancing restrictions, the cessation of visitation, the provision of soap and other cleaning materials to prisoners, and the implementation of COVID-19 testing. In previous cases, we have concluded that these actions refute any claim that the defendants were deliberately indifferent to the risk posed by COVID-19. *See Dykes-Bey v. Washington*, No. 21-1260, 2021 WL 7540173, at *3 (6th Cir. Oct. 14, 2021); *Hill v. Whitmer*, 20-1835, 2021 WL 3877920, at *2 (6th Cir. Apr. 14, 2021); *Cameron*, 815 F. App'x at 985, 988; *Wilson*, 961 F.3d at 841, 844. Consequently, affording Trapp an opportunity to amend his complaint would be futile. *See Yuhasz v. Brush Wellman, Inc.*, 341 F.3d 559, 569 (6th Cir. 2003).

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written over a horizontal line.

Deborah S. Hunt, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**