Appendix

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 25, 2022*
Decided November 22, 2022

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-3212

LOGAN DYJAK,
Plaintiff-Appellant,

v.

JO-AN LYNN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 21-C-3032

Michael M. Mihm,
Judge.

ORDER

Logan Dyjak, a civil detainee at the McFarland Mental Health Center in Springfield, Illinois, sued three medical staff alleging that they disregarded known risks of violence and sexual assault by other patients. The district judge screened the

* The appellees were not served with process and have not participated in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

complaint and dismissed it, ruling that Dyjak had failed to state a claim. But because Dyjak plausibly alleged that the defendants intentionally acted in a manner that was objectively unreasonable, we vacate and remand for further proceedings.

At this stage we accept Dyjak's allegations as true. *See Otis v. Demarasse*, 886 F.3d 639, 644 (7th Cir. 2018). Dyjak's complaint described two types of recurring, unaddressed violence at McFarland. First, another patient—who was known by McFarland staff to hit others regularly and with impunity—attacked Dyjak. Second, a third patient, while fondling his own genitals, repeatedly tried to grope Dyjak without consent, also without any intervention by McFarland staff. McFarland staff members Jo-An Lynn (clinical director), Stacey Horstman (psychiatrist), and Harvey Daniels (clinical nurse manager) knew about but did not address either patient's behavior, even though all three were responsible for addressing violence among detainees. So Dyjak brought a failure-to-protect claim under 42 U.S.C. § 1983 against these three defendants. Additionally, Dyjak moved for recruited counsel claiming poverty, lack of education, and limited access to legal materials.

The judge dismissed the complaint at screening for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2). The judge concluded that the failure-to-protect claim failed because Dyjak had not alleged that the attempted sexual assaults caused physical harm and had pleaded nothing to substantiate the allegation that the defendants appreciated a risk to Dyjak. The judge gave Dyjak 30 days to replead the failure-to-protect claim. (Dyjak's complaint also contained other allegations about incidents unrelated to those we've just described. The judge concluded that the additional allegations also failed to state a claim. We have examined that part of his ruling and see no error, so we omit further detail.)

Dyjak moved for reconsideration, arguing that the complaint was adequate. The judge found these arguments unpersuasive and denied the motion. Soon thereafter and once Dyjak's 30-day window to replead had lapsed, the judge dismissed the case without prejudice.[1]

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[1] Even though the judge stated that the dismissal was without prejudice, the judgment is appealable. The judge's statements in his merit-review order reflect that he was finished with the case. *See Lauderdale-El v. Ind. Parole Bd.*, 35 F.4th 572, 575–76 (7th Cir. 2022). Further, a dismissal without prejudice is appealable when, as here, a claim cannot be refiled because the two-year statute of limitations has run. *See Anderson*

On appeal Dyjak first argues that the complaint sufficiently stated a failure-to-protect claim. Dyjak also disagrees that the attempted sexual assaults must be alleged to have caused physical harm.

Notice pleading requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). At the pleadings stage, the complaint need contain only enough factual matter, accepted as true, to allow the reasonable inference that the defendant is liable for the alleged conduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). As a detainee, Dyjak needed only to plausibly allege facts showing that the defendants responded unreasonably to dangerous conditions at McFarland. *See Hardeman v. Curran*, 933 F.3d 816, 822–23, 825 (7th Cir. 2019) (citing *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015), and then citing *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994)) (holding that the pretrial detainee stated a conditions-of-confinement claim through allegations of "objectively unreasonable conditions"—insufficient water and exposure to backed-up toilets, their stench, and insects); *Smith v. Dart*, 803 F.3d 304, 312–13 (7th Cir. 2015) (holding that the pretrial detainee stated a conditions-of-confinement claim through allegations that "food is well below nutritional value" and that defendants knew that the detainees' water was polluted). And those conditions—as well as the defendants' response—do not have to result in physical harm; psychological harm is enough. *Budd v. Motley*, 711 F.3d 840, 843 (7th Cir. 2013).

Taking Dyjak's allegations as true, we conclude that the complaint adequately stated a failure-to-protect claim. In *Hardeman* we extended *Kingsley*'s objective unreasonableness standard to all conditions-of-confinement claims brought by pretrial detainees. *Hardeman*, 933 F.3d at 823. And such claims include those that assert a failure to protect. *See, e.g., Kemp v. Fulton County*, 27 F.4th 491, 494–95 (7th Cir. 2022) (citing *Farmer*, 511 U.S. at 833). To the extent that the judge ruled that Dyjak had not alleged enough factual detail to push the claim "from conceivable to plausible," *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007), we disagree. The complaint stated a plausible failure-to-protect claim by alleging, first, that the defendants' knowing disregard of the violent patient enabled that patient to attack Dyjak, and second, that the defendants' acquiescence to the third patient's repeated attempts to grope Dyjak while masturbating left Dyjak traumatized. For both situations the complaint sufficiently alleged that the defendants acted unreasonably by ignoring known threats to Dyjak's well-being.

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v. Cath. Bishop of Chi., 759 F.3d 645, 649 (7th Cir. 2014). (Dyjak's claim arose in early 2019.)

Accordingly, we VACATE and REMAND for further proceedings limited to Dyjak's failure-to-protect claim against Lynn, Horstman, and Daniels. On remand the judge should rule on Dyjak's motion for recruitment of counsel. *See Pruitt v. Mote*, 503 F.3d 647, 649–50 (7th Cir. 2007) (en banc).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

November 22, 2022

Before
DIANE S. SYKES, *Chief Judge*
DIANE P. WOOD, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-3212	LOGAN DYJAK, Plaintiff - Appellant v. JO-AN LYNN, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:21-cv-03032-MMM Central District of Illinois District Judge Michael M. Mihm	

We VACATE and REMAND for further proceedings limited to Dyjak's failure-to-protect claim against Lynn, Horstman, and Daniels. On remand the judge should rule on Dyjak's motion for recruitment of counsel. *See Pruitt v. Mote*, 503 F.3d 647, 649–50 (7th Cir. 2007) (en banc).

The above is in accordance with the decision of this court entered on this date.

Clerk of Court

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Friday, 24 September, 2021 01:45:18 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

LOGAN DYJAK,	)	
Plaintiff,	)	
	)	
v.	)	**No.: 21-3032-MMM**
	)	
JO-AN LYNN, et. al.,	)	
	)	
Defendants.	)	

MERIT REVIEW

Plaintiff Logan Dyjak, a detainee in the custody of the Illinois Department of Human Services ("IDHS") at the McFarland Mental Health Center ("McFarland"), has filed a complaint pursuant to 42 U.S.C. § 1983. Plaintiff disclosed in a prior filing that he is in IDHS custody after having been adjudicated not guilty by reason of insanity ("NGRI") on unspecified charges. As a result of his NGRI status, Plaintiff is considered a detainee rather than a prisoner. *See Dyjak v. Harper*, No. 18- 01011. *See also Banks v. Thomas*, No. 11-301, 2011 WL 1750065 (collecting cases) (persons adjudicated NGRI are not prisoners under § 1915). At the time he filed the complaint, Plaintiff filed a petition to proceed in forma pauperis ("IFP"). The IFP petition was denied after the Court discovered that Plaintiff had received and immediately dissipated funds. Plaintiff subsequently paid the full filing fee and the Court now undertakes a merit review of the complaint.

In reviewing the complaint, the Court accepts the factual allegations as true, liberally construing them in Plaintiffs' favor. *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). However, conclusory statements and labels are insufficient. Enough facts must be provided to "'state a claim for relief that is plausible on its face.'" *Alexander v. U.S.*, 721 F.3d 418, 422 (7th Cir. 2013) (quoted cite omitted). While the pleading standard does not require "detailed

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factual allegations", it requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Wilson v. Ryker*, 451 Fed. Appx. 588, 589 (7th Cir. 2011) quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).

MATERIAL FACTS

Plaintiff reveals that he has been held at McFarland since August 2018. He claims that during this time, there have been multiple violations of criminal law, including theft, intimidation, aggravated assault, aggravated battery, attempted murder, public indecency, criminal sexual abuse, aggravated sexual abuse, criminal sexual assault, and aggravated criminal sexual assault. Plaintiff asserts that staff at McFarland do not report this criminal behavior and are not providing appropriate therapy to prevent it, all in violation of state statute. He also claims, without offering detail, that staff is not properly trained to prevent criminal sex offenses.

Plaintiff does not claim that he has been a victim of all the enumerated offenses but claims that he has suffered irreparable emotional trauma as his friends have been victimized. Plaintiff does, however, claim to have been the victim of a crime on January 16, 2019, when another detainee stole and damaged Plaintiff's clothing. Plaintiffs alleges that he reported the theft to Defendants Security Therapy Aide Robert Austin and Nurse Diana Zucco and, rather than addressing the issue, the two allegedly encouraged Plaintiff to use physical force to retrieve his property.

Plaintiff alleges, further, that on February 27, 2019, he was battered by another detainee and suffered a split lip and injury to his jaw. Plaintiff claims that Defendant Psychiatrist Stacey Horstman and Defendant Clinical Nurse Manager Harvey Daniels were admittedly aware of the perpetrator's violent tendencies and have not provided therapy or placement to prevent future such incidents. Plaintiff does not explain, however, how he would know the details of the

psychiatric treatment, or lack thereof, provided to this inmate as to this is HIPPA-protected information.

Plaintiff claims that Defendants Horstman and Daniels, as well as Clinical Director Defendant Lynn, had an obligation to report the criminal conduct to law enforcement under 740 ILCS 110/12.1 "Report of violation or incident; investigation." While Plaintiff alleges that Defendants did not do so, he does not claim to be privy to the officials' reports and does not indicate how he knows this to be true.

Plaintiff alleges an additional offense, that on June 14, 2020, Plaintiff's roommate committed aggravated stalking, aggravated assault, aggravated battery, and attempted aggravated criminal sexual abuse of an unidentified woman. Plaintiff alleges that he "utilized justified force" to prevent "the eminent commitment commission of aggravated criminal sexual abuse." Plaintiff claims that in the altercation, he sustained bruising, organ bruising and a possible tear of the latissimus dorsi muscle. Plaintiff does not name any Defendant whom he holds responsible for this.

Plaintiff makes the additional and vague claim that there are two McFarland detainees who regularly engage in public indecency, fondling their genitals. One of the detainees would occasionally attempt to touch Plaintiff while engaging in such behavior. Plaintiff alleges that he could not avoid these situations as he had to pass through public areas for a myriad of activities. Plaintiffs alleges that at those times he would "extend" his arm or leg to limit this contact, and has been criticized by Defendants Lynn, Horstman and Daniels as being narcissistic and showing a lack of empathy.

Plaintiff alleges that the various Defendant failed to protect him from criminal activity and violated state statute in not reporting the criminal activity. Plaintiffs alleges that he filed

numerous written grievances of the matters and that Defendant Administrators Dana Wilkerson and Lana Miller ignored the grievances and failed to take remedial action. Plaintiff requests compensatory and punitive damages as well as injunctive relief; enforcement of the cited Illinois statutes which require that DHS facilities report and investigate criminal activity, and that they evaluate and make placement decisions regarding those who engage in criminal activity.

As Plaintiff is a civil detainee, his claims arise under the Due Process Clause of the Fourteenth Amendment, rather than the Cruel and Unusual Punishments Clause of the Eighth Amendment. *Darnell v. Pineiro*, 849 F.3d 17 (2nd Cir. 2017). Under this standard, a detainee need only establish that a defendant's conduct was objectively unreasonable, not that defendant was subjectively aware that it was unreasonable. *Miranda v. County of Lake*, 900 F.3d 335, 2018 WL 3796482, at *9 (7th Cir. 2018). Conduct will be found objectively unreasonable if defendant "knew, or should have known, that the condition posed an excessive risk to health or safety" and "failed to act with reasonable care to mitigate the risk." *Darnell*, 849 F.3d at 35. This standard is higher than that required to prove negligence, or even gross negligence and is "akin to reckless disregard." *Miranda*, 900 F.3d at 353. Defendant's actions must have been deliberate, purposeful or knowing, negligence is not enough. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472 (2015).

ANALYSIS

Plaintiff has alleged four distinct events. The first is that on January 16, 2019, Defendants Austin and Zucco failed to act when another inmate stole Plaintiff's clothing. The second is that, on February 27, 2019, Plaintiff was battered by another detainee who was known to be violent, and that Defendants Horstman and Daniels failed to prevent the assault; and that Defendants Hortsman, Daniels, and Lynn failed to report the criminal conduct. In the third, Plaintiff alleges that he was injured on June 14, 2020, trying to prevent another detainee attacking an unidentified

woman. Plaintiff does not clearly plead whom he holds responsible for this third incident, other than making a general claim that Defendants routinely do not report criminal conduct. The last, and most vaguely pled claim is that Plaintiff and others were routinely exposed to shows of public indecency by two of the inmates.

Plaintiff's first claim involves the loss of personal property which does not implicate a constitutional claim. *See Davis v. Biller*, 41 Fed. Appx. 84, 8485 (7th Cir 2002) (the loss of personal property, even if intentional, does not state a constitutional claim where a post-deprivation remedy was available in the Illinois Court of Claims). *See also*, *Wynn v. Southward*, 251 F.3d 588, 592-93 (7th Cir. 2001.)

Plaintiff second claim alleges that he was battered by another inmate, and that this individual had attacked others. While Plaintiff implicates Defendants Hortsman and Daniels, he alleges only that the perpetrator generally had a violent nature. He pleads nothing to substantiate that either Hortsman or Daniels appreciated a risk to Plaintiff and acted recklessly in response. *See Stidimire v. Watson,* No.17-1183, 2018 WL 4680666, at *4 (S.D. Ill. Sept. 28, 2018). "[A] plaintiff 'must show that that a defendant acted intentionally or recklessly as he 'knew, or should have known, that the condition posed an excessive risk to health or safety' and 'failed to act with reasonable care to mitigate the risk.'" While Plaintiff also seeks to assert a claim against Defendants Hortsman, Daniels, and Lynn for failing to report the event to authorities, the failure to comply with a state statute is not enough to support a constitutional claim. *See Windle v. City of Marion, Ind.*, 321 F.3d 658, 662 (7th Cir. 2003) (collecting cases).

The third claim involves Plaintiff being injured by another when he interceded to stop an attack on a third party. As noted, Plaintiff does not identify any Defendant whom he holds responsible for this event. Section 1983 liability is predicated on fault, so to be liable, a

defendant must be "personally responsible for the deprivation of a constitutional right." *Sanville v. McCaughtry,* 266 F.3d 724, 740 (7th Cir.2001) (quoting *Chavez v. Ill. State Police,* 251 F.3d 612, 651 (7th Cir.2001)). "A defendant will be deemed to have sufficient personal responsibility if he directed the conduct causing the constitutional violation, or if it occurred with his knowledge or consent." *Ames v. Randle,* 933 F.Supp.2d 1028, 1037–38 (N.D.Ill.2013) (quoting *Sanville,* 266 F.3d at 740). "A causal connection, or an affirmative link, between the misconduct complained of and the official sued is necessary.")) *Edmondson v. Decatur County Det. Ctr.*, No. 21-00499, 2021 WL 3129457, at *3 (S.D. Ind. July 23, 2021). Even if were otherwise, Plaintiff offers nothing to support that any Defendant should have objectively been aware that the unidentified resident in question would injure Plaintiff, or that Plaintiff would gratuitously intervene when another was attacked.

In the last claim, Plaintiff alleges that two inmates would publicly expose and fondle themselves. Here, Plaintiff does not allege any physical harm so may not proceed in an action for money damages based on mental or emotional anguish. See 42 U.S.C.A. §1997e(e); *Zehner v. Trigg*, 133 F.3d 459, 460 (7th Cir. 1997). While he might otherwise proceed requesting injunctive relief, as a private citizen he cannot pursue the requested relief, enforcement of state statute in a § 1983 case. *Johnson v. Piontek,* 799 Fed. Appx. 418, 419 (7th Cir. 2020).

Plaintiff's claims against Administrators Wilkerson and Miller for failing to respond to his grievances also fail. This is so, as "[s]imply receiving correspondence from a prisoner" does not make a prison official liable for the alleged infraction. *Norington v. Daniels,* No. 11- 282, 2011 WL 5101943, at *2–3 (N.D. Ind. Oct. 25, 2011). *See also, Diaz v. McBride*, 1994 WL 750707, at *4 (N.D. Ind. Nov. 30,1994) (a plaintiff cannot establish personal involvement and

subject a prison official to liability under section 1983, merely by sending the official various letters or grievances complaining about the actions or conduct of subordinates.)

There is the further issue that Plaintiff has mis-joined his various claims. As Plaintiff was told in another of his filings, he cannot name numerous Defendants, asserting independent and unrelated claims in one complaint. "[M]ultiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2." *George v. Smith,* 507 F.3d 605, 607 (7th Cir. 2007). "The Seventh Circuit has admonished district courts that 'buckshot complaints' that seek to join unrelated claims against multiple defendants belong in different suits and should be rejected 'not only to prevent the sort of morass' produced by multi-claim, multi-defendant suits 'but also to ensure that prisoners pay the required filing fees' under the Prison Litigation Reform Act. *Linton v. Godinez*, No. 16- 00492, 2016 WL 3055264, at *2 (S.D. Ill. May 31, 2016) citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). In other words, a "litigant cannot throw all of his grievances, against dozens of different parties, into one stewpot." *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 683 (7th Cir. 2012).

The Court finds Plaintiff's most viable claim is that he was injured on February 27, 2019 due to Defendant Hortsman and Daniels's alleged failure to protect him. Plaintiff will have an opportunity, within 30 days, to replead this claim. Plaintiff is not to replead his other, mis-joined claims. If he wishes to pursue these, he must file them in separate complaints with responsibility for the attendant filing fees.

IT IS THEREFORE ORDERED:

Plaintiff's complaint is dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1915A. Plaintiff will have 30 days from the entry of this order in which to replead, consistent with the Court's order. The pleading is to be captioned Amended Complaint and is to include all of Plaintiff's properly joined claims without reference to a prior

pleading. Failure to file an amended complaint will result in the dismissal of this case, without prejudice, for failure to state a claim.

9/24/2021
ENTERED

s/ Michael M. Mihm
MICHAEL M. MIHM
UNITED STATES DISTRICT JUDGE