NONPRECEDENTIAL DISPOSITION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 January 27, 2025*
Decided January 27, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-2612

KIMEO DELMAR CONLEY,
Plaintiff-Appellant,

v.

TAMI J. SCHULT,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 24-C-725

Lynn Adelman,
Judge.

ORDER

Kimeo Conley, a Wisconsin state prisoner, appeals the dismissal of his complaint alleging that the prison's food supervisor, Tami Schult, violated his Eighth Amendment

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* We have agreed to decide the case without oral argument because the brief and 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).

rights when she served him contaminated food that made him ill. 42 U.S.C. § 1983. We affirm.

We recite the facts according to the complaint, which we assume to be true, and documents that Conley attached as exhibits. *See O'Brien v. Vill. of Lincolnshire*, 955 F.3d 616, 621 (7th Cir. 2020). In early 2024, Conley was served and ate two peanut butter bars that caused him to become nauseous and vomit. He inspected what remained of the second bar and noticed metal shavings on the bottom. Conley's medical records reflect that he was examined the following day by a prison nurse and no longer reported any nausea, vomiting, or abdominal pain. About a week later, an x-ray scan showed normal abdominal findings.

Conley reported the incident through official prison channels, and Schult promptly responded, asking to look at the second bar and apologizing for what had happened. She confirmed in her response that "corrective action" had taken place, and Conley does not allege any subsequent instances of metal shavings in his food. He reached out to the warden, asking for $1 million in recompense for his injuries. The warden did not respond to the request, and Conley interpreted the warden's silence as agreement to the proposed settlement.

Conley sued Schult for subjecting him to unconstitutional conditions of confinement when she failed to ensure that he was served safe, sanitary food. He also sought to enforce his alleged settlement agreement with the warden.

The district court screened Conley's complaint and dismissed his Eighth Amendment claim, stating that allegations of a single instance of contaminated food are insufficient to plead unconstitutional conditions of confinement. *See* 28 U.S.C. § 1915A. The court also relinquished supplemental jurisdiction over Conley's state-law claim to enforce the purported settlement agreement. Finally, the court refused to permit Conley to amend his complaint, concluding that amendment would be futile because the complaint and its attachments confirmed that his claim arose out of one isolated incident.

Conley then filed two postjudgment motions. First, he moved for reconsideration, arguing that his allegations—specifically, that the food presented a substantial risk of harm—were sufficient to state an Eighth Amendment claim. He also moved to amend his complaint, alleging that he received contaminated food trays in the days leading up to the incident at issue, that other prisoners became ill from the same

incident, and that another prisoner in the facility previously had been directed to prepare rotten food.

The district court denied both motions, concluding that—even considering the new allegations—Conley's claim amounted to a single instance of food containing metal shavings. The court further determined that Conley's conclusory allegations about prior instances of contamination did not plausibly state a claim that the prison's food-service practices were constitutionally deficient.

On appeal, Conley challenges the district court's conclusion that a single incident of food contamination cannot state an Eighth Amendment claim. He asserts that a single incident can be unconstitutional if it presents—as he says he alleged—a serious risk of harm.

The district court properly dismissed Conley's complaint. To state a claim under the Eighth Amendment, Conley needed to allege that Schult was aware of but disregarded serious prison conditions that created an excessive risk to his health and safety. *See Hope v. Pelzer*, 536 U.S. 730, 736–38 (2002); *Balle v. Kennedy*, 73 F.4th 545, 552 (7th Cir. 2023). But he did not allege facts suggesting, for instance, that Schult was aware of the risk that metal shavings were present in the food, or that there was any pattern of metal shavings being found in prison food. *See Green v. Atkinson*, 623 F.3d 278, 281 (5th Cir. 2010); *see also Lunsford v. Bennett*, 17 F.3d 1574, 1580 (7th Cir. 1994) ("poorly-prepared food" not sufficient to establish inhumane conditions); *Hamm v. DeKalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985) ("The fact that the food occasionally contains foreign objects or sometimes is served cold, while unpleasant, does not amount to a constitutional violation."). What is more, the documents that Conley attached as exhibits to his complaint show that Schult promptly responded to Conley's report, apologized, and took corrective action to ensure that the issue would not recur.

Conley also challenges the district court's conclusion that amendment to his complaint would be futile, arguing that he should be given the chance to plead a pattern of contaminated food and of other prisoners becoming ill. We review de novo a ruling that amendment would be futile. *See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 524 (7th Cir. 2015). But because Conley does not articulate how his claim involved anything more than an isolated and unintentional instance of contaminated food, we agree that amendment would be futile.

Finally, Conley, believing that the statute of limitations for his state-law claim to enforce the alleged settlement has lapsed, contends that the district court erred in relinquishing jurisdiction over it. But the limitations period for contract claims under Wisconsin law is six years, *see* WIS. STAT. § 893.43; *Wascher v. ABC Ins. Co.*, 972 N.W.2d 162, 173 (Wis. Ct. App. 2022), leaving Conley ample time to pursue his claim in state court.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

January 27, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*
NANCY L. MALDONADO, *Circuit Judge*

No. 24-2612	KIMEO DELMAR CONLEY, Plaintiff - Appellant v. TAMI J. SCHULT, Defendant - Appellee
Originating Case Information:	
District Court No: 2:24-cv-00725-LA Eastern District of Wisconsin District Judge Lynn Adelman	

The judgment of the District Court is **AFFIRMED**, in accordance with the decision of this court entered on this date.

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KIMEO DELMAR CONLEY,
Plaintiff,

v. **Case No. 24-C-725**

TAMI J. SCHULT,
Defendant.

SCREENING ORDER

Plaintiff Kimeo Delmar Conley, an individual incarcerated at the Racine Correctional Institution, filed a pro se complaint under 42 U.S.C. § 1983 alleging that defendant violated his civil rights. This order resolves plaintiff's pending motions and screens his complaint.

I. MOTION FOR LEAVE TO PROCEED WITHOUT PREPAYING THE FILING FEE

The Prison Litigation Reform Act (PLRA) applies to this case because plaintiff was a prisoner when he filed his complaint. *See* 28 U.S.C. § 1915(h). The PLRA allows the court to give a prisoner plaintiff the ability to proceed with his case without prepaying the civil case filing fee. 28 U.S.C. § 1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. § 1915(b)(1). He must then pay the balance of the $350 filing fee over time, through deductions from his prisoner account. *Id.*

Plaintiff moved to proceed without prepaying the filing fee (ECF No. 2), and his complaint asks me to waive payment of the fee because plaintiff is indigent. But on July 22, 2024, the court received payment of the full $405 filing fee. I will therefore deny plaintiff's motion for leave to proceed without prepaying the filing fee as moot.

II. SCREENING THE COMPLAINT

A. Federal Screening Standard

Under the PLRA, I must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). I must dismiss a complaint if the prisoner raises claims that are legally "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. 28 U.S.C. § 1915A(b).

In determining whether the complaint states a claim, I apply the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, "accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that someone deprived him of a right secured by the Constitution or laws of the United States, and that whoever deprived him of this right was acting under the color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore*

v. *County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). I construe pro se complaints liberally and hold them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

B. Plaintiff's Allegations

Plaintiff alleges that on one occasion, during dinner on February 25, 2024, Food Supervisor Tami Schult violated his rights by failing "to ensure that all (peanut-b[u]tter-bar) desert's [sic] served, be placed on clean and new pan's that didn[']t have (metal-shaving's) upon them." ECF No. 1 at 2. Plaintiff alleges that because Schult failed to use clean pans, he "digested" metal shavings and became ill. *Id.* He says he saw medical staff the next day for vomiting and nausea. Plaintiff attached over fifty pages of documents to his complaint showing his administrative complaints and requests for information about the incident, the prison's response to his complaints, the incident report prepared about it, and the medical treatment he received. ECF No. 1-1.

Plaintiff seeks enforcement of a purported settlement agreement for $1 million that he says "the other party has conceded to by prove [sic] of documentation." ECF No. 1 at 4. He also seeks appointment of an attorney, and he asks me to review his administrative grievances about this matter and "to affirm exhaustion." *Id.*

C. Analysis

Plaintiff seeks to proceed under the Eighth Amendment, which imposes a duty to "ensure that inmates receive adequate food, clothing, shelter, and medical care." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The Eighth Amendment protects against "deprivations of essential food" and "other conditions intolerable for prison confinement." *Rhodes v. Chapman*, 452 U.S. 337, 348 (1981)). But only "extreme deprivations" amount

to cruel and unusual conditions of confinement. *Giles v. Godinez*, 914 F.3d 1040, 1051 (7th Cir. 2019) (citing *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). The court judges the alleged conditions "in accordance with contemporary standards of decency." *Id.* (citing *Hudson*, 503 U.S. at 8, and *Rhodes*, 452 U.S. at 346). To proceed, plaintiff must show that he has been deprived of "'the minimal civilized measure of life's necessities,'" *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 347), and that prison officials acted with "deliberate indifference" to a substantial risk that he would suffer serious harm, *Farmer*, 511 U.S. at 834; *Wilson*, 501 U.S. at 303.

Plaintiff alleges that on one occasion in February 2024, he was served contaminated peanut butter bars that contained metal shavings, which made him sick. He says defendant, who is the prison's food supervisor, failed to ensure that the bars were safe for consumption. Several courts in the Seventh Circuit have concluded that "[a] single instance of contaminated food is insufficient to state a claim of deliberate indifference." *Morris v. Buege*, No. 23-CV-11-PP, 2023 WL 2465882, at *4 (E.D. Wis. Mar. 10, 2023) (citing *Franklin v. True*, 76 F.3d 381 (7th Cir. 1996) (unpublished) (concluding that one instance of food poisoning was insufficient to state an Eighth Amendment claim); *see also Eines v. Maynard*, No. 121CV00354JPHCSW, 2023 WL 6158834, at *5 (S.D. Ind. Sept. 21, 2023) (citing cases for the proposition that "a single instance of unintentional food poisoning will never give rise to an Eighth Amendment violation"); *Becerra v. Kramer*, No. 16 C 1408, 2017 WL 85447, at *5 (N.D. Ill. Jan. 10, 2017) ("[A] single, isolated incident of food poisoning, even if suffered by many prisoners at an institution, does not rise to the level of a constitutional violation.").

The situation is different if plaintiff alleges "'that prison officials knew of a pattern of inmates being injured by bad food and did not[hing] to remedy the problem.'" *Morris*, 2023 WL 2465882, at *4 (quoting *Olrich v. Kenosha County*, No. 18-CV-1980-PP, 2020 WL 1169959, at *3 (E.D. Wis. Mar. 11, 2020); and citing *Green v. Beth*, 663 F. App'x 471, 472 (7th Cir. 2016)). But plaintiff does not allege a pattern of contaminated food or of prisoners becoming ill. He alleges that he consumed contaminated peanut butter bars on one occasion and became ill. He supplied documents confirming that he became ill after consuming the bars on only one occasion and showing that the prison responded to his complaints about the issue and provided him medical care. Nothing in the complaint or plaintiff's attachments suggests this was a recurring issue or that prison officials were aware that the peanut butter bars were contaminated. Plaintiff's allegations about this single incident do not state an Eighth Amendment claim.

Courts generally permit civil plaintiffs an opportunity to amend their pleadings but need not do so if "it is certain" that amendment would be futile. *O'Boyle v. Real Time Resolutions, Inc.*, 910 F.3d 338, 346–47 (7th Cir. 2018). The complaint is thorough in its allegations of facts surrounding plaintiff's claims. Allowing him to amend would be futile because his complaint and its attachments make certain that his claim involves a single instance of contaminated food, which does not state an Eighth Amendment claim. Therefore, I will not allow him an opportunity to amend his complaint.

In his complaint and a separate motion, plaintiff asks me to enforce a purported settlement agreement between him and the Department of Corrections (DOC) to pay him $1 million to compensate him for his claim. ECF No. 10. This is a state-law breach-of-contract claim over which the court does not have original subject-matter jurisdiction.

Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 381–82 (1994). Further, because I have dismissed the federal claim that gave rise to original jurisdiction over this suit, I will relinquish supplemental jurisdiction over the state contract claim. *See* 28 U.S.C. § 1367(c)(3); *Rylewicz v. Beaton Servs., Ltd.*, 888 F.2d 1175, 1181 (7th Cir. 1989).

Finally, plaintiff asks me to recruit him an attorney to represent him in this lawsuit. ECF No. 9. Because I am dismissing this lawsuit and will not permit plaintiff an opportunity to amend, I will deny this motion as moot.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that plaintiff's motion for leave to proceed without prepaying the filing fee (ECF No. 2) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that plaintiff's motions to appoint counsel and to enforce settlement agreement (ECF Nos. 9, 10) are **DENIED**.

IT IS FURTHER ORDERED that plaintiff's federal claim is **DISMISSED** under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) because the complaint fails to state a claim, and that the court relinquishes supplemental jurisdiction over plaintiff's contract claim.

IT IS FURTHER ORDERED that the Clerk of Court document that this plaintiff has incurred a "strike" under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

This order and the judgment to follow are final. A dissatisfied party may appeal this court's decision to the Court of Appeals for the Seventh Circuit by filing in this court a notice of appeal within thirty days of the entry of judgment. *See* Fed. R. of App. P. 3, 4. This court may extend this deadline if a party timely requests an extension and shows

good cause or excusable neglect for not being able to meet the thirty-day deadline. *See* Fed. R. App. P. 4(a)(5)(A).

Under limited circumstances, a party may ask this court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within twenty-eight days of the entry of judgment. The court cannot extend this deadline. *See* Fed. R. Civ P. 6(b)(2). Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of the judgment. The court cannot extend this deadline. *See* Fed. R. Civ. P. 6(b)(2).

A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.

Dated at Milwaukee, Wisconsin this 5th day of August, 2024.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KIMEO DELMAR CONLEY,
Plaintiff,

v. Case No. 24-C-725

TAMI J. SCHULT,
Defendant.

ORDER

On August 5, 2024, I dismissed plaintiff's complaint for failure to state a claim and entered judgment. Plaintiff now moves for reconsideration and to amend his complaint. ECF Nos. 16, 17. Plaintiff cites Federal Rules of Civil Procedure 59(e) and 60(b) as the basis for his motion to reconsider. Because plaintiff filed his motion within twenty-eight days of the judgment, and because he does not specify which subsection of Rule 60(b) applies to his motion, I will analyze it under Rule 59(e). A Rule 59(e) motion may be granted only if a party can "clearly establish" either newly discovered evidence or a manifest error of law or fact warranting relief. *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (citing *Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1122 n.3 (7th Cir. 2001), and *Bordelon v. Chicago Sch. Reform Bd. of Trs.*, 233 F.3d 524, 529 (7th Cir. 2000)). A "manifest error of law" "is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (quoting *Sedrak v. Callahan*, 987 F. Supp. 1063, 1069 (N.D. Ill. 1997)).

Plaintiff does not demonstrate that I made a manifest error of law. He simply disagrees with my ruling without engaging with my reasoning for determining that his

complaint did not state claim for relief. As I explained in the screening order, "[s]everal courts in the Seventh Circuit have concluded that '[a] single instance of contaminated food is insufficient to state a claim of deliberate indifference.'" ECF No. 14 at 4 (citing cases). Plaintiff's complaint alleged exactly that—he consumed tainted food on one occasion and became ill. That several other prisoners also became ill does not change that conclusion. *Id.* (citing *Becerra v. Kramer*, No. 16 C 1408, 2017 WL 85447, at *5 (N.D. Ill. Jan. 10, 2017) ("[A] single, isolated incident of food poisoning, even if suffered by many prisoners at an institution, does not rise to the level of a constitutional violation.")).

Plaintiff also does not assert that I committed a manifest error of fact. Plaintiff instead newly alleges that defendant had prior knowledge that food was being served with metal shavings due to a prior lawsuit filed by an inmate named Richard Najee. Here, plaintiff cites to case number 23-CV-00680, which Najee filed in the Western District of Wisconsin. The allegations in that case do not involve metal shavings. Instead, Najee alleges that he worked in the kitchen and was told to prep potatoes that he believed were rotten. Thus, this incident does not suggest that kitchen staff knew that the pan in which plaintiff's peanut butter bars were served was contaminated with metal shavings. In any event, the fact remains that plaintiff was served contaminated food on only one occasion, and therefore he has not been subjected to cruel and unusual punishment.

Plaintiff also seeks to amend his complaint to add allegations that other inmates were sickened by the peanut butter bars and to add allegations about Najee's prior suit. However, including these allegations in the complaint would not change the outcome. As explained above, the fact that other inmates were sickened in a single incident of food poisoning does not turn that single incident into an Eight Amendment violation. Further,

Najee's suit involved an entirely different incident that occurred a year prior to plaintiff's injury in which he was directed to prepare rotten potatoes, and that suit does not allege that any inmate was sickened as a result. Najee's allegations, when added to plaintiff's, do not give rise to a plausible inference "that prison officials knew of a pattern of inmates being injured by bad food and did not[hing] to remedy the problem." *Morris v. Buege*, No. 23-CV-11-PP, 2023 WL 2465882, at *4 (E.D. Wis. Mar. 10, 2023).

Plaintiff also alleges that he received "contaminated food tray's [sic] for two out of three meals for ten days before becoming ill from consuming the peanut butter bars." (ECF No. 17 at 1.) This allegation is suspicious because it contains the exact language used in a prior opinion from this court. *See Morris v. Buege*, No. 23-CV-11-PP, 2023 WL 3984679, at *3 (E.D. Wis. June 13, 2023) ("The plaintiff now says that he received contaminated food trays for two out of three meals for ten days prior to becoming ill from consuming food on the contaminated tray on June 26, 2022."). But even if I assume that plaintiff made this allegation in good faith, he does not provide any information about the prior instances of alleged contamination, such as the nature of the contamination. This conclusory allegation does not make plausible plaintiff's apparent belief that the institution's food-service practices are so deficient as to deprive the inmates of "'the minimal civilized measure of life's necessities.'" *Wilson v. Seiter*, 501 U.S. 294, 298 (1991). At bottom, even when plaintiff's new allegations are considered, his claim amounts to no more than that he became ill from a single incident in which the institution served him adulterated food, which does not state a claim under the Eighth Amendment. Accordingly, I will not set aside the judgment for the purpose of allowing plaintiff to amend his complaint.

IT IS THEREFORE ORDERED that plaintiff's motion for reconsideration (ECF No. 16) is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's motion to amend or correct his complaint (ECF No. 17) is **DENIED**.

Dated at Milwaukee, Wisconsin this 28th day of August, 2024.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 25, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-2612

KIMEO DELMAR CONLEY,
Plaintiff-Appellant,

v.

TAMI J. SCHULT,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 2:24-cv-725

Lynn Adelman,
Judge.

ORDER

Plaintiff-appellant filed a petition for rehearing and rehearing *en banc* on February 10, 2025. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.