

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

RAYMOND J. BERGERON-DAVILA,

Plaintiff,

v.

JEANIE KRAMER, KATHERINE LYONS,
JUSTIN RIBAUT, MEDICAL STAFF DOES 1–6,
LUCINDA BUCHANAN, MELISSA BLOCK,
LORI DOHLING, DENISE VALERIUS,
MEDICAL STAFF DOES 6–13, KELSEY STANGE,
DANIEL NORGE, MICHELLE BECKWITH,
RYAN BLOUNT, LARRY FUCSH,
CHRISTOPER OLSEN, MICHAEL GLASS, and
DOES 13–18,

Defendants.

OPINION and ORDER

21-cv-789-jdp

Pro se prisoner plaintiff Raymond J. Bergeron-Davila alleges that officials at his previous prison failed to address the health issues he suffered during a five-day long hunger strike. Dkt. 1. Bergeron-Davila has made an initial partial payment of the filing fee. The next step is for me to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. When screening a pro se litigant's complaint, I construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). Bergeron-Davila filed four motions for expedited screening of his complaint, Dkt. 7, Dkt. 10, Dkt. 13, and Dkt. 15, which I will deny as moot because I am screening his complaint now.

Bergeron-Davila's complaint states an Eighth Amendment claim and a state-law negligence claim against defendant Denise Valerius, a nurse who refused to treat the pain he

suffered on the last day of his strike. But Bergeron-Davila's allegations don't show that the other defendants knew that he needed any medical care. I will allow Bergeron-Davila to proceed on claims against only Valerius, but I will give him a short time to file an amended complaint addressing the problems with his claims against the other defendants.

Bergeron-Davila also seeks a preliminary injunction ordering officials at his current prison to maintain a food log to ensure that there is a record of a future hunger strike. Dkt. 9. I will deny Bergeron-Davila's request for an injunction because the relief he seeks isn't related to his specific claims in this lawsuit.

ALLEGATIONS OF FACT

I draw the following facts from Bergeron-Davila's complaint, Dkt. 1, and accept them as true for the purposes of screening the complaint.

At the times relevant to his allegations, Bergeron-Davila was incarcerated at Columbia Correctional Institution. Bergeron-Davila began a hunger strike in January 2021. During the strike, Bergeron-Davila completely refused to eat or drink. Prison medical and disciplinary staff knew that Bergeron-Davila was engaging in the strike because staff discussed it in weekly "multi-disciplinary team" meetings. Defendants reviewed Bergeron-Davila's food log, which showed that he was refusing his meal trays, but they made no other effort to monitor Bergeron-Davila's health. Bergeron-Davila says that his medical condition was obviously deteriorating, Dkt. 1, ¶ 10, but staff did not intervene to stabilize him.

On the fifth day of his hunger strike, Bergeron-Davila experienced several emergencies caused by the strike, including seizures and severe chest pains. A corrections officer saw Bergeron-Davila lying on the cell floor grasping his chest. The officer took Bergeron-Davila to

medical services. Bergeron-Davila was seen by the third-shift nurse, defendant Denise Valerius. Bergeron-Davila told Valerius about his chest pains and weakness. Valerius refused to treat Bergeron-Davila and returned him to his cell without any care.

ANALYSIS

A. Screening the complaint

Bergeron-Davila asserts Eighth Amendment medical care claims and state-law negligence claims against 13 named defendants and 18 unidentified John or Jane Does, contending that they did not adequately address the effects of his hunger strike. The Eighth Amendment prohibits prison officials from consciously disregarding prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976). To state an Eighth Amendment medical care claim, Bergeron-Davila must allege that each defendant was aware of a serious medical need and consciously failed to take reasonable measures to help him. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008).

Not every hunger strike gives rise to a serious medical need. If an inmate chooses to go on a hunger strike, prison officials do not have a constitutional duty to intervene if the inmate experiences only weight loss and temporary discomfort. *Owens v. Hinsley*, 635 F.3d 950, 955 (7th Cir. 2011). That's because an inmate "cannot . . . be permitted to engineer an Eighth Amendment violation" by refusing to eat. *Rodriguez v. Briley*, 403 F.3d 952, 953 (7th Cir. 2005). But prison administrators must force an inmate to take nourishment if a hunger strike has progressed to the point where continuation risks serious injury or death. *Owens*, 635 F.3d at 955 (citing *Freeman v. Berge*, 441 F.3d 543, 546-47 (7th Cir. 2006)). Put another way, a hunger

strike creates a serious medical need only if the inmate experiences “real suffering, extreme discomfort, or [] lasting detrimental health consequences.” *Freeman*, 441 F.3d at 547.

With these principles in mind, I will consider whether Bergeron-Davila’s complaint states claims for relief. His allegations fall into two categories. First, Bergeron-Davila alleges that defendant Valerius refused him care for the health problems he suffered on the fifth and final day of his strike. Second, he alleges that all defendants did not monitor his condition or intervene prior to the fifth day of his strike.

Bergeron-Davila has stated an Eighth Amendment claim against Valerius. Bergeron-Davila alleges that going five days without food or water caused him to suffer seizures and severe chest pains. Those allegations establish that Bergeron-Davila experienced, at minimum, severe discomfort. And at screening, it is reasonable to infer that Valerius could have done something to help Bergeron-Davila—including forcing him to eat or drink—but she chose not to.

Bergeron-Davila has not stated claims against the remaining defendants because he hasn’t shown that they were aware of a serious medical need. The remaining defendants are prison medical staff (Kramer, Lyons, Ribault, Buchanan, Block, Dohling, and thirteen Does) and staff on the “Multi-disciplinary team” or “M-team” (Strange, Norge, Beckwith, Blount, Fusch, Olsen, Glass, and five Does). Bergeron-Davila alleges that the M-team defendants knew that his health was declining because they discussed Bergeron-Davila’s hunger strike in a weekly meeting, and he says that the medical staff knew because they “work with” the M-team staff at their weekly meetings. Dkt. 1, ¶ 7. But because not every hunger strike gives rise to a serious medical need, awareness that Bergeron-Davila was conducting a hunger strike did not, without more, require defendants to act. *See Brooks v. Atchison*, No. 13-cv-927-JPG, 2013 WL 5497194

(S.D. Ill. Oct. 3, 2013) (“[T]here is no constitutional rule requiring a hunger-striking prisoner to be evaluated within a set time once he declares his intention to refuse food.”). To state a claim against these defendants, Bergeron-Davila must allege facts to show that each of them knew that the strike posed a serious risk to his health and safety.

Bergeron-Davila’s complaint doesn’t show that the M-team and medical staff knew that they needed to intervene in his hunger strike. Bergeron-Davila’s allegations must include sufficient factual detail to allow me to reasonably infer that each named defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And here, Bergeron-Davila doesn’t allege facts showing that staff knew that his health was in danger. Bergeron-Davila says that his declining health was “obvious,” Dkt. 1, ¶ 10, but he doesn’t explain why that is; he does not allege that he was exhibiting any symptoms prior to the fifth day of his strike or that he told any staff that he was unwell. And a five-day strike is not so long that the risk to Bergeron-Davila’s health was apparent. *See Owens*, 635 F.3d at 953–55 (lack of medical monitoring during inmate’s 25-day hunger strike did not violate the constitution). His allegations do not suggest that defendants were aware of a serious medical need, and I am not required to take his “mere conclusory statements” about their knowledge as true. *Iqbal*, 556 U.S. at 678.

Accordingly, I will not allow Bergeron-Davila to proceed on claims against the M-team and medical staff defendants at this time. But I will give Bergeron-Davila a short time to file an amended complaint. If the amended complaint does not allege facts that allow me to infer that the M-team and medical staff consciously ignored Bergeron-Davila’s serious medical needs, those defendants will be dismissed from the case. In the meantime, I will allow Bergeron-Davila to proceed on his claim against Valerius.

Bergeron-Davila also asserts negligence claims against all defendants. A negligence claim under Wisconsin law includes the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) harm to the plaintiff. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860. For the same reasons that I allowed Bergeron-Davila to proceed on an Eighth Amendment claim against Valerius, I will also allow him to proceed on a negligence claim against her. His allegation that she refused to treat his seizures and chest pain states a claim that she breached her duty of care. But I will deny Bergeron-Davila leave to proceed on negligence claims against the other defendants for the same reasons I denied him leave to proceed on Eighth Amendment claims against them. The allegations in his complaint don't show that the remaining defendants knew or should have known that they needed to intervene in his strike.

B. Motion for a preliminary injunction

Bergeron-Davila asks the court to order staff at his new prison, Waupun Correctional Institution (WCI), to place a food log on his door to ensure that there is a record of a future planned hunger strike. Dkt. 9. A preliminary injunction is an extraordinary remedy that a court may grant only after the plaintiff makes a clear showing that he is entitled to relief. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008).

I will deny Bergeron-Davila's motion because the injunctive relief he seeks is outside the scope of his claims in this case. Bergeron-Davila's request for an injunction must be tied to the specific claims he is proceeding on in this lawsuit. *See De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945) ("A preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally.") Bergeron-Davila's complaint concerns the care he received during a hunger strike at his previous prison,

and his planned hunger strike at his new prison isn't related to those allegations. His motion and his complaint concern events that took place at different times and at different places. And whether Bergeron-Davila's new hunger strike is recorded doesn't have anything to do with whether he received adequate care during a previous hunger strike. If Bergeron-Davila wishes to bring claims related to hunger strikes at his new prison, he may file a separate lawsuit about the issue.

ORDER

IT IS ORDERED that:

1. Plaintiff Raymond Bergeron-Davila is GRANTED leave to proceed on an Eighth Amendment medical care claim and a state-law negligence claim against defendant Denise Valerius.
2. Plaintiff's motions for an order on his complaint, Dkt. 7, Dkt. 10, Dkt. 13, and Dkt. 15, are DENIED.
3. Plaintiff may have until July 19, 2022, to file an amended complaint addressing the issues identified in this opinion. If plaintiff does not file an amended complaint by that date, the remaining defendants will be dismissed from the case.
4. Plaintiff's motion for an injunction, Dkt. 9, is DENIED.
5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
6. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

7. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
8. If plaintiff is transferred or released while this case is pending, it is plaintiff's 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 claims may be dismissed for his failure to prosecute them.

Entered June 28, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge