

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

QUINTIN D. L'MINGGIO,

Plaintiff,

ORDER

v.

01-C-0559-C

PAMELA BARTELS, SHIRLEY OLSON,
DR. BOSTON, ELLEN K. RAY and
JANE DOES RNs/LPNs,

Defendants.

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Quintin D. L'Minggio, who is currently an inmate at Supermax Correctional Institution in Boscobel, Wisconsin, alleges that defendants violated his Eighth Amendment right to adequate dental care by neglecting a broken wisdom tooth (from June 1 to July 10, 2001) and withholding or providing inadequate pain medication for that tooth.

On November 15, 2001, plaintiff was granted leave to proceed on his dental claim, but that claim was stayed because of his membership in the class in Jones 'El v. Berge, No. 00-C-421-C. On March 28, 2002, I approved the settlement agreement in Jones 'El. Because the case settled, I never ruled whether the dental health care identified in Jones 'El

violated the Eighth Amendment. Had there been a finding of liability, it may have been possible for plaintiff to prove in this lawsuit that he was entitled to money damages for injuries he suffered as a result of the dental conditions. Because the settlement in Jones 'El did not resolve the issue of liability on the claim of systemic inadequacies in dental health care at Supermax, it is necessary to reconsider whether plaintiff has alleged facts in this lawsuit sufficient to make out a claim of a constitutional violation.

Upon lifting the stay imposed because plaintiff's dental claims overlapped with the dental claim in Jones 'El and examining his allegations, I conclude that he has stated two Eighth Amendment claims: (1) that defendants Boston (dentist), Olson (nurse), Jane Doe RNs/LPNs deliberately denied him adequate pain medication against and (2) that defendant Bartels's (health services administrator) failure to provide a sufficient number of dentists to serve the Supermax prison population caused plaintiff to unnecessary pain and suffering. Because plaintiff fails to allege that defendant Ray (inmate complaint examiner) denied him any pain medication, I will dismiss defendant Ray.

Plaintiff should be aware that, with respect to his pain medication claim, he must prove that defendants were deliberately indifferent to his serious need for dental care. It is not enough for plaintiff to simply assert facts that, if true, would constitute poor or negligent dental care. See Kelley v. McGinnis, 899 F. 2d 612, 616 (7th Cir. 1990) (differences of opinion as to matters of medical judgment, negligent treatment or even medical malpractice

are insufficient to state claim under § 1983); Estelle v. Gamble, 429 U.S. 97, 103 (1976)) (“Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”). In other words, plaintiff will have to prove that these individuals deliberately withheld pain medication from him. In addition, when plaintiff discovers the names of the other nurses (Jane Doe RNs/LPNs) who allegedly denied him pain medication deliberately, he must amend his complaint naming these individuals.

With respect to plaintiff’s claim of systemic dental deficiencies, it is unclear whether defendant Bartels, the health services administrator, was in a position to increase the number of dentists on duty at Supermax. If defendant Bartels is not a person with the authority to hire additional dentists at Supermax, plaintiff will have to name such an individual and amend his complaint to reflect the proper individual. If plaintiff fails to do so, his claim of systemic deficiencies in the provision of dental care will be subject to dismissal on a motion to dismiss.

ORDER

IT IS ORDERED that

1. The stay imposed by the court on November 15, 2001, is lifted;
2. Plaintiff Quintin D. L’Minngio is allowed to proceed on his two Eighth Amendment claims: (a) that defendants Dr. Boston, Shirley Olson and Jane Doe RNs/LPNs

deliberately denied him adequate pain medication and (b) that defendant Pamela Bartels's failure to provide a sufficient number of dentists to serve the Supermax prison population caused plaintiff to unnecessary pain and suffering.

3. Defendant Ellen K. Ray is DISMISSED.

Entered this 20th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge