

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

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SARIAH J. DAINE, legal guardian and  
on behalf of JUSTIN A. WOODARD,

Petitioner,

v.

WINNEBAGO MENTAL HEALTH  
INSTITUTE; STATE OF WISCONSIN,

Respondents.  
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ORDER

02-C-0295-C

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). In her complaint, petitioner makes the following allegations of fact.

## ALLEGATIONS OF FACT

Petitioner Sariah J. Daine is the maternal grandmother and legal guardian of Justin A. Woodard, who was being treated for chemical dependency at the Winnebago Mental Health Institute's Anchorage Unit. While there, Woodard overdosed on cold medication that he took from a medication cart that was not properly supervised or secured. Woodard was allowed to lie on the floor for hours before medical help was sought, even though a nurse saw him with the medical cart's drawer open. Woodard frequently took pills from the medical cart and once "huffed" from a spray can of cleaner left on the unit.

When Woodard was 16 he was transferred to an adult forensic unit, which is not a good place for a vulnerable teen to be housed.

Laboratory reports concerning Woodard's ingestion of drugs were delayed as a result of the lab's slow reporting process.

Woodard was given Ativan, an anti-psychotic medication.

Even though Woodard was subject to suicide precautions much of the time he was at respondent Winnebago Mental Health Institute and even though he had a one-on-one staff attendant there, the Institute staff said in court that he was not a danger to himself or others and should not be committed. Petitioner was told that Institute staff no longer wanted Woodard housed at respondent Winnebago Mental Health Institute after petitioner

had filed a complaint. An investigation was conducted by the Department of Health and Family Services that resulted in state and federal citations.

### OPINION

Petitioner's complaint is fraught with problems. As an initial matter, petitioner may not proceed pro se (that is, without a lawyer) on her grandson's behalf, even if she is his legal guardian. Navin v. Park Ridge School District 64, 270 F.3d 1147, 1149 (7th Cir. 2001) (non-lawyer parent has no authority to appear as child's legal representative). Ordinarily, that conclusion would bring this matter to a close. However, as relief petitioner seeks compensation not only on her grandson's behalf, but for her own pain and suffering as well.

Even assuming that petitioner could recover money damages for herself on the basis of her allegations, she has additional problems. 42 U.S.C. § 1983 creates a cause of action against "every *person*" who under color of state law abridges rights guaranteed by the Constitution and federal law. The statute does not authorize suits against states because states are not "persons" within the meaning of § 1983. Power v. Summers, 226 F.3d 815, 818 (7th Cir. 2000). This means respondent State of Wisconsin must be dismissed. It also means that respondent Winnebago Mental Health Institute must be dismissed because "it is well established that neither a state nor a state agency . . . is a 'person' for purposes of § 1983." Ryan v. Illinois Dept. of Children and Family Services, 185 F.3d 751, 758 (7th Cir.

1999). Rather than suing the state or a state agency, persons bringing claims for money damages under § 1983 must base them on an individual respondent's personal involvement in an alleged constitutional or federal law violation. Although a respondent's direct participation in the violation is not required, an official satisfies the personal responsibility requirement only "if she acts or fails to act with a deliberate or reckless disregard of petitioner's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge or consent." Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985); Crowder v. Lash, 687 F.2d 996, 1005 (7th Cir. 1982). Accordingly, if petitioner believes her constitutional rights have been violated, she must name individual respondents who were personally involved in the alleged constitutional violation. She cannot sue the state of Wisconsin or a state agency such as the Winnebago Mental Health Institution for monetary relief.

Finally, petitioner should be aware that unlike state courts, federal courts are courts of limited jurisdiction. They can hear only those cases that Congress empowers them to hear. Generally, federal courts have the power to hear two types of cases: (1) "diversity" cases in which the petitioner, a citizen of one state, alleges a violation of her rights established under state law by a citizen of another state and (2) so-called "federal question" cases in which the petitioner alleges a violation of her constitutional rights or rights established under federal law. All the parties named in petitioner's complaint are residents

or agencies of the state of Wisconsin so diversity jurisdiction does not apply. As for federal question jurisdiction, petitioner alleges that respondents are guilty of “negligence and endangerment.” Claims like these are governed by state law and typically are not considered federal questions.

Accordingly, the complaint in this case will be dismissed without prejudice. Petitioner’s allegations do not suggest that her own constitutional or federal rights were infringed. However, if she still believes that she has a viable constitutional or federal law claim, she may have until July 31, 2002, in which to submit an amended complaint naming proper respondents and describing how she believes her rights were violated, as opposed to her grandson’s. Alternatively, petitioner may have until July 31, 2002, in which to obtain a lawyer to represent her legal ward and to file an amended complaint on his behalf. If, by July 31, 2002, petitioner has not complied with this order, this action will be dismissed without prejudice and the case will be closed. See Furnace v. Board of Trustees of Southern Illinois Univ., 218 F.3d 666, 669-70 (7th Cir. 2000) (describing difference between dismissal of complaint without prejudice and dismissal of entire action).

#### ORDER

IT IS ORDERED that

1. Petitioner’s complaint is dismissed without prejudice; and

2. Petitioner may have until July 31, 2002, in which to submit an amended complaint on her own behalf naming proper respondents or to obtain a lawyer to file an amended complaint on behalf of Justin A. Woodard. If petitioner chooses not to comply with this order by July 31, 2002, petitioner's action will be dismissed without prejudice and the clerk of court will enter judgment for defendants and close this case.

Entered this 3rd day of July, 2002.

BY THE COURT:

Handwritten signature of Barbara B. Crabb in cursive script.

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BARBARA B. CRABB  
District Judge