

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

JEFFREY FRIDAY, officer 2 at Waupun
Correctional Institution; STEVEN HOUSER,
captain at Waupun Correctional Institution;
WILLIAM SCHULTZ, Financial Specialist 2
at Waupun Correctional Institution,

Defendants.

ORDER

02-C-459-C

Plaintiff asks the court for leave to amend his complaint pursuant to Fed. R. Civ. P. 15(a). Plaintiff seeks to amend his complaint to: (1) sue supervisory officials and a prison health service official who caused him to be denied adequate medical care by using inadequate care-givers and denying him nose surgery; and (2) to properly plead his due process claim regarding his transfer to the Wisconsin Secure Program Facility.

Rule 15(a) states that “a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served” and that otherwise amendments are permissible “only by leave of court.” Plaintiff requires leave of the court to amend his

complaint because defendants have filed an answer to his complaint. Whether to grant leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court. Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). The Court of Appeals for the Seventh Circuit has enumerated four conditions that justify denying a motion to amend: undue delay; dilatory motive on the part of the movant; repeated failure to cure previous deficiencies; and where the amendment would be futile. CogniTTest Corporation v. Riverside Publishing Company, 107 F.3d 493, 499 (7th Cir. 1997).

Plaintiff's request to amend his complaint is the result of undue delay and granting such amendment would be futile. Plaintiff's excuse that he did not know how to plead a due process claim in the initial complaint regarding his transfer to the Wisconsin Secure Program Facility is neither here nor there. I denied plaintiff leave to proceed on his prison transfer claim because this court has rejected the theory that prisoners do not have a liberty interest when transferred to more restrictive prison conditions.

Furthermore, in the November 21, 2003, opinion and order I granted defendants' motion for summary judgment on plaintiff's medical care claims, finding that defendants responded adequately to plaintiff's medical needs. The one remaining claim in this case is scheduled for trial on Monday, March 1, 2004. It is too late for plaintiff to add more parties relating to his medical treatment. In the preliminary pretrial conference order, United States Magistrate Judge Stephen L. Crocker gave the parties until October 31, 2003 to complete

discovery. Plaintiff claims that he did not learn until summary judgment that a prison health service member actually denied his nose surgery request. I entered the summary judgment opinion and order over three months ago. Plaintiff has had plenty of time to discover all the defendants essential to his action and make more timely requests to amend his complaint. Waiting until the 11th hour to add more defendants on a dismissed claim qualifies plaintiff's request easily as undue delay. I will deny plaintiff's motion to amend his complaint.

ORDER

IT IS ORDERED that plaintiff Nathaniel Allen Lindell's motion to amend his complaint under Fed. R. Civ. P. 15(a) is DENIED.

Entered this 27th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge