

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

MONTELL M. HORTON,

Plaintiff,

ORDER

v.

02-C-0470-C

GERALD BERGE, PETER HUIBREGTSE,
PAMELA BARTELS and JOHN DOE,

Defendants.

After this case was removed to this court from the Circuit Court for Dane County, Wisconsin, I screened plaintiff's complaint as required under 28 U.S.C. § 1915A and allowed him to proceed on the following four claims: (1) that on October 26, 2001, defendants Peter Huibregste and John Doe denied plaintiff's advancement to level 4 in retaliation for grievances he had filed; (2) that defendant Pamela Bartels was deliberately indifferent to his serious medical needs when she refused to let him see an optometrist for over 21 days for his eye condition; (3) that defendant Berge's previous policy of 24-hour cell illumination and allowing noisy mentally ill inmates to be confined at Supermax caused him sleep deprivation; and (4) that the combination of certain conditions of confinement imposed by defendant Berge (windowless cell; no contact with other prisoners; four hours of "so-called exercise" a week; limited use of library, exercise cell and telephone; visits by video; video monitoring; and the lack of any meaningful programming) caused him social isolation and sensory deprivation in violation of his Eighth

Amendment rights.

Plaintiff was denied leave to proceed as to all other claims. In addition, plaintiff was given until October 15, 2002, in which to allege which of the myriad of state statutes cited in his complaint, if any, relate to the alleged acts of wrongdoing making up the four federal claims on which he has been granted leave to proceed. In response, plaintiff has filed a motion to remand, in which he declines expressly to identify any state statute that relates to the four federal claims. See Plt.'s Mot. to Remand, dkt. #12. Because plaintiff has failed to identify any state law claim relating to the federal claims on which he has been allowed to proceed in this case, I will remand the state law claims under 28 U.S.C. § 1441(c). Plaintiff should be aware that if any state law claim arises out of the same operative facts on which I have granted him leave to proceed in this lawsuit, those state law claims may be subject to dismissal in state court under the doctrine of res judicata if this court decides the issues in this case before the state court rules. See Roboserve, Inc. v. Kato Kagaku Co., Ltd., 121 F.3d 1027, 1034 (7th Cir. 1997) (“The doctrine of res judicata (claim preclusion) requires litigants to join in a single suit all legal and remedial theories that concern a single transaction.”) (internal citation omitted). In any event, plaintiff’s motion to remand his state law claims will be granted.

In addition, plaintiff has filed a motion to reconsider many of the claims on which I denied him leave to proceed. Because nothing in plaintiff’s motion convinces me that I erred in denying him leave to proceed on those claims, I will deny his motion to reconsider. Finally, plaintiff has filed a “first amended complaint” in which he adds facts regarding two claims on which I denied him leave to proceed: inadequate cell temperatures and improper handling of his mail. (It is unclear why plaintiff

chose to file an amended complaint rather than include these claims in his motion to reconsider.) However, plaintiff has not added any new facts that would cause me to change the decision that plaintiff should not be granted leave to proceed on either of these claims. Accordingly, plaintiff's motion to amend his complaint will be denied.

Finally, in compliance with the magistrate judge's October 15, 2002 preliminary pretrial conference order, defendants have identified Linda Hoddy-Tripp as the John Doe whose handwriting most likely appears on plaintiff's October 26, 2001 Level 4 advancement review form. See Letter dated October 17, 2002, dkt. #14.

ORDER

IT IS ORDERED that

1. Plaintiff Montell M. Horton's motion to remand his state law claims is GRANTED; plaintiff's state law claims are REMANDED to the Circuit Court for Dane County, Wisconsin;
3. Plaintiff's motion to reconsider is DENIED; and
4. Plaintiff's motion to amend his complaint is DENIED.

Entered this 7th day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge