

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

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EUGENE L. CHERRY,

Plaintiff,

v.

GERALD BERGE, CINDY SAWINSKI,  
JOLENE MILLER and JOLINDA WATERMAN,

Defendants.  
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ORDER

02-C-544-C

Plaintiff is proceeding in this case on a claim that he was denied medical care in violation of the Eighth Amendment. The claim is nearly identical to a claim of medical mistreatment that plaintiff made in another lawsuit now pending in this court, Cherry v. Litscher, 02-C-394-C. The only differences in plaintiff's claim in this case and his claim in 02-C-394-C are that he is suing different prison officials for failing to properly treat him and he is alleging that the failure to treat covers a slightly later time.

Now plaintiff has filed a motion for a preliminary injunction in this case in which he asks for an order that he be transferred out of the Wisconsin Secure Prison Facility to another institution because he is not receiving adequate medical treatment for his herpes and

stomach condition and because prison staff are retaliating against him by putting needles and staples in his food for “having the court interfere in D.O.C. business.”

In Cherry v. Litscher, 02-C-394-C, plaintiff filed a motion for a preliminary injunction requesting a transfer out of the Wisconsin Secure Prison Facility for the alleged reason that he was not receiving treatment for the same medical conditions. In denying the motion, I noted that although plaintiff had alleged that he has a “deadly” stomach condition, he had presented no evidence that he is in any immediate danger or that a transfer out of the Wisconsin Secure Prison Facility was “the least intrusive means necessary to correct the harm” as required under the 1996 Prison Litigation Reform Act. See 18 U.S.C. § 3626(a)(2). Similarly, plaintiff makes no showing of irreparable harm or a likelihood of success on the merits in this case. The only evidence plaintiff submitted in support of his motion for a preliminary injunction relating to his medical condition is his own allegation that “[s]ince 2000, plaintiff has been and is still currently suffering from lesions and blisters on his genitals and severe abdominal pain due to his illnesses not being properly treated.” He makes no showing that the conditions have worsened over the three years he has had his diseases and provides no evidence of defendants’ deliberate indifference to his medical needs. Without such evidence to prove a likelihood of success on the merits of his claim and that he will suffer irreparable harm if an injunction is not issued, plaintiff cannot obtain a preliminary injunction.

Plaintiff's request for a transfer out of the Wisconsin Secure Prison Facility for the reason that unknown prison officials are retaliating against him for his legal activities by putting needles and staples in his food is not properly raised in the context of this lawsuit. It is this court's policy to require a plaintiff alleging retaliation for initiating a lawsuit to present the claim in a lawsuit separate from the one that is alleged to have provoked the retaliation. Plaintiff was not granted leave to proceed in forma pauperis on a retaliation claim in this lawsuit. To the extent that this lawsuit is a lawsuit plaintiff believes is provoking retaliation, he will have to file a separate lawsuit.

An exception to this policy is possible only where it appears that the alleged retaliation would directly, physically impair the plaintiff's ability to prosecute his lawsuit. Arguably, plaintiff is contending that by putting sharp objects in his food, prison officials are trying to kill him. A dead plaintiff would certainly be impaired physically from prosecuting his lawsuit. However, despite plaintiff's submission of a needle and some staples with his motion, I conclude that his assertion that prison officials are trying to kill him for filing lawsuits is both incredible and fanciful. Prison officials are subjected to dozens of lawsuits on a regular basis. They win most of them. It is impossible to imagine that a correctional official would risk his own conviction and imprisonment for murder simply because he was unhappy about being sued by a prisoner for actions taken in connection with his job.

However, it is entirely conceivable that plaintiff has convinced himself erroneously

that he is the target of a plot by prison officials to harm him physically. If this is his state of mind, it is a painful one not easily relieved. He may find a remedy with medical staff at the prison that this court is not empowered to give.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Entered this 27th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge