

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

HARRISON FRANKLIN,

Plaintiff,

ORDER

v.

02-C-618-C

GARY R. McCAUGHTRY, GERALD BERGE,
PAULINE BELGADO, SARGENT SIEDOSCHLAG,
PETER HUIBREGTSE, LINDA HODDY-TRIPP,
MS. BLACKBOURNE, JIM WEGNER, SARGENT
LIND, CAPTAIN JOHN P. GRAHL, SARGENT
DAN MEEHAN, CO II MIKE GLAMAN, and
NURSE HOLLY MEIER,

Defendants.

In an order dated January 28, 2003, I granted plaintiff Harrison Franklin's request for leave to proceed in forma pauperis on various claims that defendants violated his constitutional rights. However, I stayed a decision whether to grant plaintiff leave to proceed on his claims that (1) defendants Gary R. McCaughtry, Pauline Belgado, Sgt. Siedoschlag, Jim Wegner and Holly Meier violated his rights under the Eighth Amendment when they failed to adequately treat his finger; and (2) prison officials violated his right of access to courts when they failed to allow him to use law books or provide him with

computer training and delayed his receipt of copies of his petition for a writ of habeas corpus. Because I had previously dismissed an identical claim in a previous lawsuit involving treatment of plaintiff's finger for failure to exhaust his administrative remedies, I gave plaintiff until February 12, 2003, in which to demonstrate that he had exhausted his administrative remedies with respect to that claim. In addition, I instructed plaintiff to amend his complaint to include allegations about how he was hindered in pursuing a legal claim when defendants would not provide him with law books or make copies for him.

Plaintiff has responded in part to both instructions. In a document entitled, "Motion Consistent with Court Order Dated 1-28-2003," plaintiff alleges that he has in fact exhausted all of his administrative remedies with respect to his claim of inadequate medical care. However, he requests an order compelling discovery because he no longer has the documents that demonstrate exhaustion.

Plaintiff's motion to compel discovery will be denied. Orders compelling production of documents are reserved for instances in which a party has refused to cooperate with a reasonable discovery request. See Fed. R. Civ. P. 37(a). Plaintiff does not allege that he has even *requested* the documents he seeks from defendants. However, I will not continue to stay plaintiff's medical care claim until he has produced evidence of exhaustion. In the interest of maintaining the orderly progress of this lawsuit, I will accept as true for now plaintiff's allegation that he has exhausted his administrative remedies. I will grant plaintiff leave to

proceed on a claim that defendants violated his right to adequate medical care. Plaintiff should note that defendants are still entitled to make a motion to dismiss any of his claims for failure to exhaust. If plaintiff believes he has exhausted his administrative remedies with respect to each of his claims, he should obtain the necessary documents to support his belief.

In the same motion, plaintiff asks for leave to amend his complaint to include allegations about the injuries he received as a result of defendants' refusal to provide him with law books. He alleges that in case no. "02-C-078," assistant attorney general Marguerite M. Moeller "used [plaintiff]'s inability to use law books and produce relevant case law against him." He also alleges that the "judge's" opinion noted that plaintiff could not cite any Supreme Court case law in his favor.

I note first that this court has no record of a case filed in the Western District of Wisconsin resembling the case he describes. Case no. 02-C-78-C was a products liability suit to which plaintiff was not a party. Further, this court's records reveal no case in which assistant attorney general Moeller acted as counsel when plaintiff was a party. A review of Wisconsin's internet database of all court filings in the state reveals no case matching the description plaintiff provided. Even assuming that plaintiff did file the lawsuit he describes, he still has not alleged an injury. The court's alleged reference to a lack of legal authority supporting plaintiff's argument does not suggest that plaintiff could have avoided dismissal by doing more legal research. If anything, it shows that doing more research would have been

futile because no authority supported his claim. Therefore, because plaintiff cannot allege that he was injured by the lack of access to law books, his request for leave to proceed on this claim will be denied and that claim will be dismissed.

Plaintiff has alleged no additional facts regarding how he was injured by defendants' refusal to make copies for him. Therefore, I will dismiss that claim as well.

ORDER

IT IS ORDERED that

1. Plaintiff Harrison Franklin's request for leave to proceed in forma pauperis is GRANTED on his claim that defendants Gary R. McCaughtry, Pauline Belgado, Sgt. Siedoschlag, Jim Wegner and Holly Meier violated his rights under the Eighth Amendment when they failed to adequately treat his finger.

2. Plaintiff's request for leave to proceed is DENIED on his claims that defendants violated his right of access to courts by refusing to provide him with law books or make photocopies for him. These claims are DISMISSED from this case.

3. Plaintiff's motion to compel discovery is DENIED as unnecessary.

4. Plaintiff's motion for leave to amend his complaint is DENIED as moot.

Entered this 7th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge