

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

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DONALD NICHOLS,

Plaintiff,

ORDER

v.

02-C-0245-C

OFFICERS GRESSMAN, BLISS,  
STARKY, KARNOPP, and HEISZ,

Defendants.  
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On June 10, 2002, I granted plaintiff leave to proceed on his claim that defendants used excessive force against him and were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. However, when defendant Gressman could not be served, he was dismissed from the case without prejudice to plaintiff's refiling his lawsuit against him at a later time. Subsequently, following a fair amount of discovery, and full briefing on defendants' motion to dismiss for plaintiff's failure to exhaust his administrative remedies, defendants Bliss, Starky, Karnopp and Heisz and plaintiff entered into a settlement agreement and filed a stipulated order of dismissal. The case was closed on January 30, 2003.

Now plaintiff has written a letter dated April 17, 2003, in which he advises the court that he has located defendant Gressman. He asks for permission to reopen this case to litigate his excessive force claim against Gressman.

Although plaintiff was allowed to proceed in forma pauperis in this action, he has now paid the full filing fee as required under the 1996 Prison Litigation Reform Act. In addition, as I indicated above, the parties have devoted time to discovery issues and fully briefing a motion to dismiss for failure to exhaust administrative remedies. I believe it would be unfair to plaintiff and defendant if they were required to start this action from scratch. Therefore, plaintiff's motion to reopen this case will be granted. If Assistant Attorney General Sandra Tarver, counsel for the settling defendants in this action, will be representing defendant Gressman, she is free to file on defendant Gressman's behalf, the motion to dismiss she filed on behalf of the other defendants and she may do so in lieu of filing an answer. Even if defendant Gressman is not represented by the attorney general, he may advise the court that he wishes to stand on the motion filed on behalf of the other defendants. In that instance, I will take the motion under advisement and stay all other proceedings in the action until the motion has been decided.

ORDER

IT IS ORDERED that plaintiff's motion to reopen this case is GRANTED. Enclosed with this order to plaintiff are Marshals Service and summons forms for plaintiff to complete and return to the court no later than May 16, 2003. If, by May 16, plaintiff fails to return the completed forms or explain his failure to do so, I will close this action once again for plaintiff's failure to prosecute.

Entered this 2nd day of May, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge