

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

JEFFREY JON BONNIN,

Plaintiff,

v.

EAU CLAIRE COUNTY,

Defendants,

ORDER

03-C-65-C

In a preliminary pretrial conference order dated May 29, 2003, the magistrate judge gave plaintiff until July 11, 2003, in which to file an amended complaint identifying defendants he had referred to in his original complaint as “jailers,” “officers” and “sheriff’s deputies.” The magistrate judge advised plaintiff that the amended complaint should contain plaintiff’s hand-written changes in the body of the complaint replacing all references to generically described jail or county officials with the names provided to him by the county and show a new caption listing the new defendants.

Instead of following the magistrate judge’s directive, on July 10, 2003, plaintiff submitted a letter listing the names of five individuals and requesting that they be added to the lawsuit as defendants. The individuals listed are

1. William R. Boelke
2. Kevin J. Otto
3. Jonathan J. Pendergast
4. Michael P. Mayer
5. Sheila A. Blanas

In an order entered on August 5, 2003, I advised plaintiff that his submission did not satisfy his obligation to amend his complaint to identify the defendants and connect each one of them to one or more of the acts forming the basis for the claims on which he had been granted leave to proceed. I told plaintiff that his submission left it impossible for the court or defendants to know who is alleged to have beaten plaintiff and sprayed him with pepper spray, who is alleged to have denied him medication, who is alleged to have denied his requests for medical attention for his alleged serious medical needs following the use of force, and who is alleged to have denied him food and water for more than 24 hours. Therefore, I gave plaintiff “one more opportunity” to amend his complaint no later than August 18, 2003, to comply with the magistrate judge’s order. To assist plaintiff in filing a proper proposed amended complaint, I sent him another copy of his complaint and again directed him as follows:

In each instance where plaintiff refers to a “jail officer,” “sheriff’s deputy” “jailer” or “officer,” he is to replace the reference by writing in the name of the appropriate individual.

Now, again, instead of resubmitting his original complaint with a new caption and the names of the jailers, officers, and sheriff's deputies written in place of references in the complaint to these individuals by profession only, plaintiff has submitted a two-sided letter which I construe as his proposed amended complaint, together with a motion for leave to amend. In the proposed amended complaint, plaintiff alleges the following facts:

ALLEGATIONS OF FACT

On November 11, 2002, plaintiff was picked up by Eau Claire County from the Wisconsin Resource Center and taken to the Eau Claire County jail. In the evening, plaintiff became angry because he could not get a mattress or have his cell door closed until 8:00 p.m. Officer Boelke pushed the trouble call button and officers Otto, Pendergast, Blanas and Sgt. Mayer came to the unit and locked it down. These officers came into plaintiff's cell and asked plaintiff to put his hands behind his back. Plaintiff complied. While plaintiff was talking to Sgt. Mayer, one of the officers sprayed plaintiff with pepper spray. Plaintiff was then tackled by four officers while Officer Blanas hit plaintiff in his knee with a club. While plaintiff was on the ground, he was sprayed with pepper spray and his face was smashed into the floor. He was then dragged from the unit and his face was rammed into doors and walls all the way to the holding cell, where he was slammed onto a concrete bed. He woke up moments later uncuffed and alone.

Plaintiff has a heart condition. Following his placement in a holding cell, plaintiff

requested medical attention because he was having chest pains. He began yelling and pressing the speaker button, begging for water and a nurse for his chest pains. He then asked for his medication “until [he] couldn’t pound on [the] window any longer.”

Plaintiff was not given breakfast or lunch. He was then transported to the Wisconsin Resource Center and was refused supper by the “transport guys.”

OPINION

Plaintiff has not strictly complied with this court’s directive to submit his original complaint with written name corrections and a caption listing all of the new defendants. Nevertheless, I have created a caption page to be attached to plaintiff’s proposed amended complaint and will allow plaintiff to proceed against William R. Boelke, Kevin J. Otto, Jonathan J. Pendergast, Michael P. Mayer and Sheila A. Blanes on his claim that he was subjected to the use of excessive force on November 11, 2002. In addition, liberally construing the proposed amended pleading, I will assume at this early stage of the proceedings that plaintiff is alleging that one or more of these same individuals knew of plaintiff’s chest pains following his placement in a holding cell and deliberately refused to arrange for him to receive his heart medication or see a nurse.

However, plaintiff has stated that he missed two meals at the jail on the day of his return to the Wisconsin Resource Center, and that he missed dinner while he was in the custody of the “transport guys.” In his original complaint, plaintiff had alleged that despite

his numerous requests to jail officials, he was denied food and water at the Eau Claire County jail for a period of more than 24 hours.

As I stated in the order granting plaintiff leave to proceed in forma pauperis on his food deprivation claim, the “withholding of food is not a per se objective violation of the Constitution.” Reed v. McBride, 178 F.3d 849, 853-54 (7th Cir. 1999). Instead, courts “must assess the amount and duration of the deprivation.” Id.; see also Simmons v. Cook, 154 F.3d 805, 808 (8th Cir. 1998) (prisoners denied four consecutive meals over two days stated Eighth Amendment claim). Plaintiff does not allege that any one of the five named jail officials was involved personally in denying him two meals before he left for the Wisconsin Resource Center. Even if he had, the withholding of two consecutive meals does not rise to the level of an Eighth Amendment violation. Therefore, I will dismiss plaintiff’s food deprivation claim from the amended complaint on the ground that it is legally frivolous.

Despite the absence of allegations in the amended complaint of wrongdoing against Eau Claire County, I will stand by my March 27, 2003 decision not to dismiss respondent Eau Claire County at this early stage of the litigation, because I cannot say categorically that it will be impossible for plaintiff to prove that the conduct he complains of stems from an official municipal policy or custom.

ORDER

IT IS ORDERED that

1. Plaintiff's letter of August 10, 2003 is construed as an amended complaint and a motion for leave to file an amended complaint.

2. The amended complaint shall consist of plaintiff's August 10 communication and a caption page created by the court. A copy of the operative amended complaint is attached to this order.

3. Plaintiff's request for leave to proceed in forma pauperis with the amended complaint is GRANTED in part and DENIED in part. Plaintiff is allowed to proceed in forma pauperis against defendants William R. Boelke, Kevin J. Otto, Jonathan J. Pendergast, Michael P. Mayer and Sheila A. Blanas on his claims that he was subjected to the use of excessive force on November 11, 2002 and that these defendants were deliberately indifferent to his serious medical needs. Plaintiff is DENIED leave to proceed in forma pauperis against defendants on his claim that he was deprived of two meals on the day he was returned to the Wisconsin Resource Center, because this claim does not rise to the level of a constitutional violation and therefore lacks legal merit.

4. The court will arrange promptly to have plaintiff's complaint served on the newly named defendants.

Entered this 22nd day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge