

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

JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;
MICHAEL CATALANO;
PRISON HEALTH SERVICES, INC.;
PAM BARTELS;
JOHN W. KUSSMAUL; D. ESSER;
FUERSTENBURG; JANTZEN;
TIM F. HAINES; SHIRLEY OLSON;
KERRY MELBY; BECKY MANNING;
and GERALD A. BERGE,

Defendants.

ORDER

04-C-116-C

Plaintiff Cole has moved for reconsideration of this court's order of April 21, 2004. In that order, I denied plaintiff's earlier motion to reconsider Judge Lynn Adelman's February 26, 2004 order dismissing defendants Doe 2-33, 38, 40-81, 83, 85-94, B-C and F-P from this action. Plaintiff takes issue with this court's statement that I would not disturb Judge Adelman's dismissal order because he has had ample time to identify the Doe defendants related to his claims and has not yet done so. Now plaintiff argues that Fed. R.

Civ. P. 26(d) prevented him from seeking discovery before the parties “conferred as required by Rule 26(f).” This argument is unavailing. Fed. R. Civ. P. (a)(E)(iii) exempts “actions brought without counsel by a person in custody of the United States, a state, or a state subdivision” from the requirements of Fed. R. Civ. P. 26(f). Therefore, plaintiff was under no obligation to wait to engage in discovery.

Plaintiff argues as well that Judge Adelman erred in dismissing certain of his Doe defendants for failure to state a claim against them. In plaintiff’s view, he made the requisite showing of personal involvement of numerous unidentified prison officials in violating his constitutional rights. Given the fact that plaintiff undertook in his complaint to assert the claims of 14 plaintiffs as well as himself against dozens of Doe defendants, it is quite possible that Judge Adelman may have overlooked a potential defendant against whom plaintiff seeks to recover damages. However, Judge Adelman screened plaintiff’s complaint more than a year ago. Although he did not expressly dismiss Doe defendants 2-33, 38, 40-81, 83, 85-94, B-C and F-P until February 26, 2004, plaintiff was put on clear notice of the claims on which he was being allowed to proceed and the claims that were being dismissed on March 7, 2003. If he believed that Judge Adelman had overlooked a claim or a potential defendant, he should have raised the issue then.

I remain convinced that plaintiff could have proceeded more promptly to discover who the Doe defendants were so that he could amend his complaint to name them and serve

them with the complaint. Even now, plaintiff does not appear to know who the cast of characters are that he wishes added to his lawsuit, and I am not willing to delay the proceedings even longer while he figures it out. It is time to move on.

ORDER

IT IS ORDERED that plaintiff Jonathan Cole's motion for reconsideration of this court's order of April 21, 2004, is DENIED.

Entered this 18th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge