

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

JOEL FLAKES,

Plaintiff,

v.

CORRECTIONS CORPORATION OF AMERICA,
JANE SONDALE, DANIEL BENIK and
SGT. DAKEN,

Defendants.

ORDER

04-C-189-C

Plaintiff Joel Flakes has filed a motion for reconsideration of this court's order of April 30, 2004, in which I allowed him to proceed on a number of his claims and dismissed other claims for lack of legal merit. With one exception, plaintiff's motion for reconsideration is nothing more than reargument of matters I have already decided. Because these arguments fail to persuade me that I erred in ruling as I did, plaintiff's motion will be denied in part. The exception relates to plaintiff's argument that I should have allowed him to proceed against defendant Matthew Frank for the sole purpose of permitting him to discover who was responsible for denying him surgery after he was transferred to the Columbia Correctional Institution in March of 2001. Even as to this argument, plaintiff does not

make a showing of error in the April 30 order. Instead, he has alleged additional allegations and has attached an exhibit to his motion that shows that on May 17, 2004, Medical Director George M. Daley approved “arrangements for [plaintiff’s] surgery or other services as needed.” When I ruled on the question whether plaintiff stated a claim of deliberate indifference to his serious medical needs against any of the named defendants, it was not possible to infer from the allegations of plaintiff’s complaint that Daley had approved Class III medical services. For that reason, it appeared that plaintiff might have a claim against Daley, whom plaintiff did not sue, but he did not state a claim of deliberate indifference against anyone else. Now, with plaintiff’s clarification that he received approval from Dr. Daley to receive surgery “or other services as needed,” and that he has not yet received surgery or such “services,” I will allow him to proceed against defendant Matthew Frank for the sole purpose of discovering who, if anybody, is ignoring Dr. Daley’s authorization that plaintiff receive surgery or other services as needed for his hips.

ORDER

IT IS ORDERED that plaintiff’s motion for reconsideration of this court’s order of April 30, 2004 is GRANTED in part and DENIED in part. It is GRANTED to allow plaintiff to proceed against defendant Matthew Frank for the sole purpose of discovering who is acting with deliberate indifference to plaintiff’s serious medical needs by ignoring Dr.

George M. Daley's authorization for surgery or other medical services. In all other respects, the motion for reconsideration is DENIED.

A copy of plaintiff's complaint was served on Matthew Frank on February 27, 2004. Defendant Frank may have twenty days from the date of service of this order in which to serve and file a response to plaintiff's complaint.

Entered this 20th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge