

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

JEFFREY A. VOIGT,

Plaintiff,

v.

BRIAN MILLER, Security Director,
Stanley Correctional Institution,

Defendant.

ORDER

05-C-356-C

On July 25, 2005, I granted plaintiff leave to proceed on his claim that defendant Miller was deliberately indifferent to his safety by refusing to arrange for him to remain separated permanently from an inmate Weasley, who had attacked plaintiff and injured him in mid-February 2005. I denied plaintiff leave to proceed on a claim against Warden Daniel Benik, because the only allegations in plaintiff's complaint against Benik were that Benik wrote a letter to petitioner on March 8, 2005, acknowledging that petitioner had submitted a separation request to defendant Miller. Plaintiff did not allege that Benik had any knowledge that Miller would refuse to act on the request before May 7, 2005, when plaintiff was directed to return to the unit in which Weasley was housed. (Plaintiff alleged in his

complaint that when he refused to follow Miller's direction, he was placed in disciplinary segregation for sixty days, or until July 7, 2005.) Now plaintiff has filed a document titled "Supplemental Complaint in Support of Complaint Submitted on June 13, 2005, and response to this Court's Decision Dated 7/25/2005" I construe plaintiff's submission as a motion to amend his complaint to add evidence of his claims against defendant Miller, show former defendant Benik's knowledge of the incident and withdraw his request for preliminary injunctive relief. The motion to amend will be denied because submission of evidence is not necessary to cure any defect in plaintiff's pleading, plaintiff's "evidence" relating to former defendant Benik does not support a claim of constitutional wrongdoing against him and it is not necessary for plaintiff to amend his complaint to withdraw his request for injunctive relief.

Fed. R. Civ. P. 8 provides that a complaint should contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends. . . , (2) a short and plain statement of the claim . . . , and (3) a demand for judgment for the relief the pleader seeks." Documentary evidence to support the claims made in the complaint is appropriately filed only in connection with motions requiring evidentiary submissions, such as a motion for summary judgment, or at trial. Plaintiff's "exhibits" do not cure any pleading defect in the complaint. Moreover, because the exhibits are not authenticated, they are not presently useful as evidence at all. If plaintiff intends to rely on these documents at some later time

in connection with a motion for summary judgment or at trial, he will have to submit an affidavit establishing their authenticity or obtain a stipulation from defendant's counsel that they are what they appear to be.

Plaintiff's "exhibits" relating to Warden Benik are 1) a letter dated March 1, 2005, from Benik to plaintiff in which Benik acknowledges that he has received a letter from plaintiff dated February 20, 2005, explaining the events leading up to the altercation with inmate Weasley; and 2) a July 25, 2005 letter, in which Benik notes that on June 14, 2005, plaintiff was moved from the Stanley Correctional Institution to the New Lisbon Correctional Institution, closing the matter of plaintiff's separation from Weasley. Nothing in these exhibits changes my view that plaintiff failed to allege any facts from which an inference can be drawn that Benik knew defendant Miller would refuse to act on plaintiff's separation request before May 7, 2005, when Miller directed plaintiff to return to the unit on which Weasley was housed.

Finally, plaintiff notes that his transfer to the New Lisbon Correctional Institution on June 14, 2005, moots the request for preliminary injunctive relief (separation from Weasley) that he made in his complaint. In the July 25 order granting plaintiff leave to proceed against defendant Miller, I noted that plaintiff had moved for a preliminary injunction. However, I denied the motion on the ground that plaintiff had not observed the procedures of this court for obtaining preliminary injunctive relief and because it was not

clear whether a live controversy remained. In particular, because plaintiff filed his complaint in mid-June, it was not clear whether he would be forced into a housing unit with Weasley when his sixty-day segregation period ended. I told plaintiff that if he wished to pursue his request for emergency injunctive relief, he was free to refile his motion in accordance with this court's Procedure to be Followed on Motions for Injunctive Relief, a copy of which I enclosed to him with the July 25 order. Plaintiff's concession that he is no longer in need of preliminary injunctive relief is informative, but this information does not require an amendment to his complaint. His request for injunctive relief can simply be dismissed as moot.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED.

Further, IT IS ORDERED that plaintiff's request in his original complaint for injunctive relief is DISMISSED as moot.

Entered this 19th day of August, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge