

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

GEORGE CHROBUSTOWSKI,

Plaintiff,

MEMORANDUM and ORDER
05-C-411-S

v.

FOOD AND DRUG ADMINISTRATION,

Defendant.

Plaintiff George Chrobustowski commenced this civil action on July 18, 2005. He alleges in his complaint that the defendant is withholding "cancer-cure" treatment from him.

On September 29, 2005 defendant moved to dismiss plaintiff's complaint for failure to state a claim upon which relief may be granted. Pursuant to this Court's September 30, 2005 order plaintiff's response to this motion was to be filed not later than October 19, 2005 and has not been filed to date.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6)

a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

FACTS

For purposes of deciding defendants' motion to dismiss the facts alleged in plaintiff's complaint are taken as true.

Plaintiff is an adult resident of Friendship Wisconsin. The defendant Food and Drug Administration is an agency of the United States.

The defendant is withholding cancer cure treatment from the public. He asks the Court to help him receive this treatment and alleges that he has been damaged in the amount of five hundred million dollars.

MEMORANDUM

Defendant moves to dismiss plaintiff's complaint. The allegations in plaintiff's complaint are unclear.

The United States and its agencies, however, are immune from suit based on sovereign immunity except where the government has consented to be sued. Plaintiff has alleged no consent to be sued or waiver of immunity that would allow this claim to proceed against the defendant. Accordingly, plaintiff's complaint must be

dismissed for failure to state a claim upon which relief may be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendant's motion to dismiss plaintiff's complaint is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant DISMISSING plaintiff's complaint and all claims contained therein with prejudice.

Entered this 24th day of October, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge