IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ANTHONY TUCKER,

Plaintiff,

ORDER

v.

06-C-066-C

WISCONSIN DEPARTMENT OF CORRECTIONS, OAKHILL CORRECTIONAL INSTITUTION, DIAMONDBACK CORRECTIONAL, JACKSON CORRECTIONAL INSTITUTION, NORTHFORK CORRECTIONAL FACILITY, PRAIRIE CORRECTIONAL FACILITY, BUREAU OF HEALTH SERVICES MEDICAL DIRECTOR,

Defendants.

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After I screened plaintiff's proposed complaint in this case on February 15, 2006, judgment was entered dismissing the case for failure to state a claim. Although plaintiff contended that defendants had exhibited deliberate indifference to his medical needs while he was incarcerated, he "pleaded himself out of court" by alleging facts and submitting documents that demonstrated conclusively that he had received continuous medical care

during the time period in which he alleged his medical care had been inadequate. Doe v. Smith, 429 F.3d 706, 708 (7th Cir. 2005) ("[L]itigants may plead themselves out of court by alleging facts that defeat recovery.")

On June 15, 2006, plaintiff filed a motion for reconsideration in which he asked the court to find that he had stated a claim after all. In an order dated June 19, 2005, I denied plaintiff's motion after finding no legal basis for reopening plaintiff's case four months after entering judgment. Now plaintiff has written the court, asking again that his case be reopened. I construe his letter as a renewed motion under Fed. R. Civ. P. 60.

Plaintiff's renewed motion faces several obstacles. First, as I explained in the June 19 order, motions for relief from a judgment pursuant to Fed. R. Civ. P. 60 must be made "within a reasonable time." Although plaintiff alleges that he spent much of February and early March being transferred between various county jails, he does not explain why he waited from March until mid-June before moving for reconsideration of his case. However, even if his motion were timely, plaintiff has not alleged any ground for relief under Rule 60.

In the June 19 order, I explained that a plaintiff could obtain relief under Rule 60 when the judgment contained clerical errors or when the judgment had been unjustly entered because of "mistake, inadvertence, surprise, or excusable neglect," or when new evidence had been discovered evidence which by due diligence could not have been discovered in a timely fashion. Now, in response to that order, plaintiff asserts that the court's order dismissing

his case contained clerical errors, that he was "surprised by the entry of judgment and that he has found new evidence (in the form of recent doctor's reports) all of which justify granting his Rule 60 motion. I am unpersuaded.

Although plaintiff alleges there are "clerical errors" in the court's order, he does not indicate what these errors might be. The "new evidence" to which plaintiff makes reference are reports from doctor's visits he attended in the spring of 2006—none of which are relevant to plaintiff's claim that prison doctors were deliberately indifferent to his medical needs during the time he was imprisoned. Finally, plaintiff asserts that he was "surprise[d] that the case was dismissed, because it was granted in the Eastern U.S. Court." (By this statement, I assume plaintiff is referring to the decision of the United States District Court for the Eastern District of Wisconsin to transfer plaintiff's case to the Western District of Wisconsin under 42 U.S.C. § 1406(a).) Plaintiff may not have anticipated that his case would be dismissed after screening; however, that is not the kind of "surprise" to which Rule 60 is directed.

Yet even if it were possible to reopen judgment under Rule 60, nothing in plaintiff's motion indicates that this court erred when it concluded that he failed to state a claim against defendants. Plaintiff admits that he was seen by many medical care providers during his incarceration. His complaint continues to be that these doctors did not provide him with surgery for his benign lipomas and disc degeneration. "A prisoner's dissatisfaction with a

doctor's prescribed course of treatment does not give rise to a constitutional claim unless the medical treatment is so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition." Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996). Plaintiff has alleged no more than a disagreement with the medical care he received and has proposed no legal basis upon which to reopen his case. Consequently, plaintiff's renewed Rule 60 motion must be denied.

ORDER

IT IS ORDERED that plaintiff's renewed Rule 60 motion is DENIED.

Entered this 15th day of August, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge