

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

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KENNETH RAY PARRISH,

Petitioner,

v.

STEVE WATTER, Director of  
Health and Family Services; and  
THOMURE BRUCE, Officer;  
EMPLOYEES WITH TIM THOMAS,  
Unit Manager; and THOSE PERSONS  
ACTING IN ACTIVE CONCERT OR  
PARTICIPATION WITH THEM,

Respondents.

ORDER

06-C-235-C

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WILLIE HOGAN,

Petitioner,

v.

STEVE WATTER, Director of  
Health and Family Services; and  
THOMURE BRUCE, Officer;  
EMPLOYEES WITH TIM THOMAS,  
Unit Manager; and THOSE PERSONS  
ACTING IN ACTIVE CONCERT OR  
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Petitioners Willie Hogan and Kenneth Ray Parish have filed identical pleadings seeking money damages for alleged violations of their constitutional rights. Each is a patient in involuntary custody at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, and each seeks leave to proceed in forma pauperis. From the affidavits of indigency accompanying petitioners' complaints, I conclude that petitioners are unable to prepay the fees and costs of instituting their lawsuits.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Petitioners' requests for leave to proceed in forma pauperis will be denied because each has failed to state a claim that respondents violated their constitutional rights.

There are only two factual allegations in petitioners' complaints. One describes petitioners Kenneth Ray Parrish and Willie Hogan as being held in involuntary custody of the Wisconsin Department of Health and Family Services pursuant to Wisconsin's Sexual Predator Law, Wis. Stats. ch. 980. The other is a description of respondents as employees at the Sand Ridge facility. All of petitioners' remaining assertions are legal conclusions. They cite case law for propositions that 1) intentional infliction of emotional harm violates the Eighth Amendment; 2) wilful acts are distinguishable from malpractice; 3) minimal due

process is required in certain situations; 4) individuals are entitled to due process in relation to Chapter 980 proceedings; and 5) mental health staff should be consulted when committed persons with psychological problems face disciplinary proceedings. Nowhere in their complaints do petitioners describe to what allegedly unconstitutional actions or inactions they may have been subjected and who performed or failed to perform the acts.

In their request for relief petitioners state, “a remedy is available in an action under 42 U.S.C. § 1983, which is applicable to a person who languishes in a mental facility although they are not mentally ill.” If petitioners are claiming that they have been improperly identified as persons subject to involuntary commitment under Chapter 980, their claim is not properly raised in a civil proceeding brought pursuant to 42 U.S.C. § 1983. Heck v. Humphrey, 512 U.S. 477, 481 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475 (1973) (stating that a petition for habeas corpus under 28 U.S.C. § 2254 “is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release”). Instead, petitioners may challenge the validity of their diagnosis and subsequent confinement under Chapter 980 in petitions for writs of habeas corpus after they exhaust all state court remedies available to them as required under 28 U.S.C. § 2254.

ORDER

IT IS ORDERED that the requests for leave to proceed in forma pauperis in these civil actions filed by petitioners Kenneth Ray Parrish and Willie Hogan are DENIED and these cases are DISMISSED without prejudice to petitioners raising their claim of illegal confinement in a petition for a writ of habeas corpus after they have exhausted their state court remedies.

Entered this 3d day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge