

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

JAMES TRACY,

Petitioner,

v.

KIMBERLY CHUDIK-HESS, Agent,
MICHAEL MONROE, Supervisor,
MRS. CHILDS, Social worker,
ART THURMER, Regional chief,

Respondents.

ORDER

07-C-107-C

This is a proposed civil action for injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Prairie du Chien Correctional Institution in Prairie du Chien, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if

the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner is a prisoner at the Prairie du Chien Correctional Institution in Prairie du Chien, Wisconsin. Respondent Kimberly Chudik-Hess is a parole agent, respondent Michael Monroe is respondent Chudik-Hess's supervisor and respondent Mrs. Childs is a social worker. Respondent Art Thurmer is the Regional Chief for the Region 1, South Central Wisconsin office of the Wisconsin Department of Corrections, Community Corrections.

On October 24, 2006, petitioner received a letter from respondent Chudik-Hess telling him that she would work with a “ledger keeper” to get his case assigned to the Juneau County area probation and parole office in time for his mandatory release date. On December 27, 2006, petitioner received an information request from his social worker, respondent Childs, telling him that the Department of Corrections had denied his residence requests for several reasons and because his “cousin changed his mind.” In addition, Childs sent petitioner a note telling him that he would be sent to alternative housing. Enclosed with the note was an information packet and program rules for Caravilla Education and Rehabilitation Community Center.

OPINION

It is difficult to understand why petitioner has brought this lawsuit in federal court. He is suing individuals in the Wisconsin Department of Corrections apparently because they have denied his request to be released into the county of his choice to live with a cousin who apparently changed his mind about having him as a house guest. Federal courts have the power to hear two types of cases: cases in which the petitioner alleges a violation of his constitutional rights or rights established under federal law and cases in which a citizen of one state alleges a violation of his rights established under state law by a citizen of another state. Petitioner’s claim falls into neither of these categories.

Petitioner does not suggest what possible constitutional right or federal law grants him an entitlement to release into the county of his choice and I am aware of none. He does not allege that he and the respondents are citizens of different states and that more than \$75,000 is at stake in his suit, so that jurisdiction might attach under the diversity statute, 28 U.S.C. § 1332. Even if he had, he has alleged nothing to suggest that the decision to release him to the Caravilla Education and Rehabilitation Community Center violates state law.

ORDER

IT IS ORDERED that

1. Petitioner's request for leave to proceed in this action seeking an order directing respondent Kimberly Chudik-Hess to assign him to Juneau County at the time of his mandatory release is DENIED and this case is DISMISSED as legally meritless.
2. The unpaid balance of petitioner's filing fee is \$343.53; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2);
3. A strike will be recorded against petitioner pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 23d day of March, 2007.

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