

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

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IVORY WADE,

Petitioner,

v.

ORDER

3:07-cv-716-bbc

MR. ROBERT HUMPHREYS, Warden  
and MR. MONAR, Security Director,

Respondents.  
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Petitioner Ivory Wade, a prisoner at the Wisconsin Resource Center in Winnebago, Wisconsin, is currently proceeding on claims in another case, Wade v. Castillo, 07-cv-462-bbc, in which he contends that Dr. Castillo, a psychiatrist at the Racine Correctional Institution, was deliberately indifferent and negligent in his care of petitioner's mental health needs during petitioner's confinement at Racine. In an order dated October 5, 2007, in 07-cv-462-bbc, I concluded that petitioner was not capable of litigating his claims because of his history of mental illness and his persistent inability to understand legal proceedings. I concluded also that appointment of counsel was appropriate in that case because his claims involve complex medical evidence and decisions whether to pursue federal law or state law claims or both. In an order dated January 15, 2008, I appointed David Anstaett and David Harth to represent petitioner in that case.

Shortly before I appointed counsel, however, petitioner filed a second proposed complaint and a request to proceed in forma pauperis which was treated as a new case and assigned a new case number. In his complaint petitioner alleged that respondents Robert Humphreys, the warden at Racine Correctional Institution, and Mr. Monar, the security director at Racine Correctional Institution, were deliberately indifferent to petitioner's mental health care needs when 1) they refused to transfer petitioner to another facility following two suicide attempts in July and August 2007; 2) they failed to give petitioner proper medical attention for five weeks; 3) respondent Humphreys approved petitioner's placement in segregation for 360 days for cutting his wrist; and 4) respondent Monar failed to insure petitioner's health and safety.

The events giving rise to the claims in this case are nearly identical to those in case no. 07-cv-462-bbc. The only noticeable difference between these two lawsuits is that petitioner is attempting to sue two new respondents in this case for claims he is already litigating in case no. 07-cv-462-bbc. If attorneys Harth and Anstaett decide that petitioner's claims against respondents Humphreys and Monar are legitimate claims, they are free to amend the complaint in case no. 07-cv-462-bbc to include these new defendants.

Because I have found petitioner incapable of litigating his claims in 07-cv-462-bbc, I will not allow him to proceed with nearly identical claims against respondents Humphreys and Monar in this lawsuit. Petitioner's filing of this lawsuit is further evidence of his inability to follow directions from the court and comprehend court procedure. For these

reasons, petitioner's complaint against respondents Humphreys and Monar will be dismissed and his request for leave to proceed in forma pauperis will be denied. Because petitioner's new complaint should have been filed, if at all, as a proposed amended complaint in case no. 07-cv-462-bbc, and because petitioner has demonstrated his lack of ability to make sound judgments in pursuing his claims, it is appropriate to relieve him of the obligation to pay a \$350 fee for filing this case improvidently. Therefore, the court's financial records will not include this action as one for which petitioner must pay a filing fee.

ORDER

IT IS ORDERED that petitioner Ivory Wade's request for permission to proceed in forma pauperis is DENIED and this case is DISMISSED because it contains claimss duplicative of those in case number 07-cv-462-bbc.

Entered this 23d day of January, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge