

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

LEIGHTON D. LINDSEY,

Plaintiff,

v.

Captain SALTZER, RYAN ARMSON
and JOSEPH CHICANOWICZ,

Defendants.

ORDER

10-cv-385-bbc

In this civil action for monetary relief brought pursuant to 42 U.S.C. § 1983, plaintiff Leighton Lindsey is proceeding on claims that defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz used excessive force against him. The deadline for dispositive motions has passed and trial is scheduled for November 14, 2011.

Now before the court are several motions filed by plaintiff, including a motion for the court to accept filings that have been mailed by another inmate on plaintiff's behalf, dkt. #66, a motion to amend his complaint, dkt. #64, a motion for leave to obtain written depositions under Fed. R. Civ. P. 31, dkt. #74, a motion requesting five subpoenas for the purpose of obtaining the written depositions, dkt. #76, two motions for writs of habeas

corpus ad testificandum, dkts. #70 and #71, and a motion in limine, dkt. #73.

I will grant plaintiff's motion for the court to accept filings that have been mailed by another inmate on his behalf. Plaintiff says it is necessary for another inmate, G'esa S. Kalafi-Felton, to mail plaintiff's documents because plaintiff does not have sufficient funds or resources to mail them himself. As long as plaintiff reads and signs all documents filed on his behalf in this case as required by Fed. R. Civ. P. 11(a), the court will accept documents that are mailed by another inmate.

Turning next to plaintiff's motion to amend his complaint, I will deny the motion. Whether to grant a party leave to amend its pleadings is a decision left to the district court's discretion. Hudson v. McHugh, 148 F.3d 859, 864 (7th Cir. 1998). Under Fed. R. Civ. P. 15(a)(2), a court should freely grant a party leave to amend its pleadings "when justice so requires." However, a request to amend may be denied on several grounds, including undue delay, undue prejudice to the party opposing the motion or futility of the amendment. Sound of Music v. Minnesota Mining and Manufacturing Co., 477 F.3d 910, 922-23 (7th Cir. 2007).

In his proposed amended complaint, plaintiff seeks to add new claims against six new defendants. One of the proposed defendants, Dylan Radtke, was dismissed previously from this case for plaintiff's failure to exhaust his administrative remedies, dkt. #42, and plaintiff voluntarily dismissed another two of the proposed defendants at the screening stage, Paul

Ketorkus and Brian Neumaier, because his claims against them violated Fed. R. Civ. P. 20. Although plaintiff contends that these defendants never should have been dismissed from the case, he does not explain why he waited until a short time before trial to clarify his claims against these defendants. Allowing plaintiff to amend his complaint at this stage would cause prejudice to defendants because the entire case would have to be rescheduled. If plaintiff wishes to bring claims against these six additional defendants, he must file a new lawsuit.

Next, I will deny plaintiff's motion requesting leave under Fed. R. Civ. P. 31(a)(2)(B) to obtain written depositions from defendants and various non-parties, as well as plaintiff's motion for five subpoenas for this purpose. Rule 31 sets forth specific procedures that plaintiff must follow to obtain deposition via written questions. For example, it would be plaintiff's responsibility to pay for the room in which the deposition was held and to pay a court reporter to record the depositions. In addition, plaintiff appears to understand that to obtain Rule 31 depositions of non-parties, he must comply with Rule 45 and obtain subpoenas from the appropriate court. Rule 45(b)(1) requires that plaintiff obtain service of the subpoenas and tender to each witness the fees for one day's attendance and the mileage expenses allowed by law. In meeting these requirements, plaintiff is on his own. The fee for a subpoena cannot be waived by this court, McNeil v. Lowney, 831 F.2d 1368, 1373 (7th Cir. 1987), and this court has no money to pay for room rentals, court reporter

costs, witness fees, mileage expenses or service fees in civil cases, even when the litigant is an indigent pro se prisoner. Because plaintiff has not stated that he has the ability to pay for these arrangements, I will deny his motions for Rule 31 depositions and the related subpoenas. I note that plaintiff still has the ability to obtain information from defendants through written interrogatories under Rule 33 and requests for information under Rule 34.

Finally, I will wait to rule on plaintiff's motions for writs of habeas corpus ad testificandum and motion in limine until the case is closer to trial. Plaintiff should review the requirements for calling witnesses to trial that are contained in the pretrial conference order that was issued on November 22, 2010. Dkt. #27. Also, in a couple of weeks, plaintiff will receive a pretrial preparation order containing important instructions. This order may answer many of his questions about the trial.

ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey's motion to accept materials filed by G'esa Kalafi-Felton on plaintiff's behalf, dkt. #66, is GRANTED. The court will accept materials filed by another inmate so long as plaintiff has read and signed all of the documents submitted to the court.

2. Plaintiff's motion to amend his complaint, dkt. #64, is DENIED.

3. Plaintiff's motion for leave to obtain written depositions under Fed. R. Civ. P. 31, dkt. #74, and motion to obtain five subpoenas for the purpose of obtaining written depositions, dkt. #76, are DENIED.

Entered this 26th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge