

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

JAMES J. KAUFMAN,

Plaintiff,

v.

JEFFREY PUGH, SANDRA COOPER,
TERRY SHUK, ISMAEL OZANNE
and OFFICER O'CONNELL,

Defendants.

ORDER

11-cv-421-bbc

In this lawsuit, plaintiff James Kaufman is proceeding on First Amendment claims against defendants Officer O'Connell, Terry Shuk, Sandra Cooper, Jeffrey Pugh and Ismael Ozanne for denying plaintiff possession of greeting cards and books of postcards on the ground that they were pornographic. Now plaintiff has submitted a motion for leave to file a proposed supplement to the complaint, adding claims against Pugh and new defendants Daniel Westfield, Charles Cole and Sheila Patten for denying him possession of two more books.

I must deny plaintiff's motion because he failed to exhaust his administrative remedies regarding these new claims until after he filed his original complaint in this action. (Defendants explain that plaintiff exhausted these claims in September 2011. Plaintiff filed

his original complaint in this case in state court in December 2010.) In his reply brief, plaintiff cites Barnes v. Briley, 420 F.3d 673 (7th Cir. 2005), for the proposition that he may exhaust his new claims after filing his original complaint, but the facts in that case pertaining to exhaustion were unique and entirely distinguishable from cases such as this one.

In Barnes, the pro se plaintiff originally filed his complaint under the Federal Tort Claims Act. Although Barnes had exhausted his administrative remedies under the Act, he had not grieved his claim through the prison's inmate complaint system. Subsequently, Barnes was appointed counsel, who determined that plaintiff's claim was properly brought under 42 U.S.C. § 1983 rather than the Tort Claims Act. Counsel initiated the prison grievance process and, once Barnes had exhausted his administrative remedies, he dismissed his Tort Claims Act claim against the defendant United States and, with leave of the district court, amended his complaint to allege § 1983 claims against entirely new defendants. In that rare instance, the court of appeals held that Barnes had properly exhausted his administrative remedies under the Prison Litigation Reform Act because his amended complaint was "the functional equivalent of filing a new complaint." Barnes, 420 F.3d at 678.

That is not the case here; plaintiff seeks to append similar First Amendment claims to the ongoing lawsuit. Because plaintiff raises claims in his proposed supplemental complaint that he failed to exhaust before he filed his original complaint, he may not amend

his complaint to assert those claims. If he wants those claims considered, he will have to file a new lawsuit raising them.

ORDER

IT IS ORDERED that plaintiff James Kaufman's motion for leave to submit a supplemental complaint, dkt. #12, is DENIED.

Entered this 25th day of January, 2012.

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