

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

SCOTT A. KONITZER,
a/k/a Donna Dawn Konitzer,

Plaintiff,

v.

GARY HAMBLIN, JANEL NICKEL,
JANET MINK, CAPTAIN KELLER,
TINA MARTIN, RANDY BECKER, and
CORRECTIONS OFFICER FRAUNDORF,

Defendants.

OPINION AND ORDER

11-cv-426-slc

Plaintiff Scott A. Konitzer a/k/a Donna Dawn Konitzer, is proceeding on claims that the defendant prison officials failed to protect her¹ from an assault by John H. Balsewicz, a fellow inmate at the Columbia Correctional Institution. In November 2011, defendants filed a motion to stay proceedings in this case until the pending criminal charges against Balsewicz had been resolved. Dkt. 31. I denied that motion as premature because defendants had not then encountered problems deposing Balsewicz. Dkt. 47.

On March 26, 2012, defendants renewed their motion to stay, claiming that their earlier fears have vested and they have been unable to obtain information necessary to the development of their defense. Dkt. 68. In addition, during the past month, Konitzer has moved for leave to supplement her complaint to add claims of retaliation and two new defendants, dkt. 89, and has filed various requests related to the authenticity of the documents introduced as exhibits during Balsewicz's deposition, dkts. 81, 98-100. With respect to the evidentiary motions, Konitzer seeks to accuse defendants of criminal conduct and asks the court to hold a hearing to review the allegedly fraudulent evidence, dkts. 81 and 98; asks the court to sanction defendants

¹At Konitzer's request, the court will refer to her using female pronouns.

for lying to the court by supporting their motion to stay with fabricated evidence, dkt. 99; and asks that the court seal docket entries 68 through 71 because they reveal private information about Konitzer that also could subject her to abuse in prison, dkt. 100.

For the reasons stated below, I am granting defendants' motion to stay (dkt. 68), denying Konitzer's requests for an inquest hearing and Rule 11(b) sanctions (dkt. 81, 98-99) and granting in part and denying in part Konitzer's motion to seal certain documents in the record (dkt. 100). Having reviewed Konitzer's proposed supplement to her complaint, I conclude that she cannot proceed on any new claims at this time because the supplement violates Fed. R. Civ. P. 20. *See* dkt. 89.

OPINION

I. Motion to Stay

Although there is no constitutional requirement to stay civil proceedings pending the outcome of criminal proceedings, a court may do so at its own discretion pursuant to its inherent power to control its own docket. *See Clinton v. Jones*, 520 U.S. 681, 706-07 (1997); *Landis v. North Amer. Co.*, 299 U.S. 248, 254-55 (1936). The general test for imposing a stay requires the court to "balance interests favoring a stay against interests frustrated by the action" in light of the court's strict duty to exercise jurisdiction in a timely manner. *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (citing *Landis*, 299 U.S. at 255). Courts also must take care not to abuse their discretion by issuing an "immoderate or indefinite" stay in the absence of a pressing need. *Id.* District courts, including this one, often consider the following factors in determining whether to issue a stay: "(1) whether the litigation is at an early stage; (2) whether a stay will unduly prejudice or tactically disadvantage the non-moving party;

(3) whether a stay will simplify the issues in question and streamline the trial; and (4) whether a stay will reduce the burden of litigation on the parties and on the court.” *Grice Engineering Inc. v. JG Innovations, Inc.*, 2010 WL 768971, at *3 (W.D. Wis. Mar. 4, 2010) (citations omitted).

This case is in its early stages. The parties have begun discovery but the deadline for filing dispositive motions has not passed. Defendants have shown through affidavits and deposition testimony that they have been unable to obtain information critical to their defense of the case: witness Balsewicz has invoked his Fifth Amendment right against self-incrimination and is unwilling to testify about the underlying events of the attack, the events leading up to the attack and his prior relationship with Konitzer. Balsewicz also possesses documents involving himself and Konitzer that he is not willing to produce until his criminal case is completed. Because a pivotal dispute in this lawsuit is whether Balsewicz and Konitzer jointly staged the attack, Balsewicz is an essential witness. Further, in the event that defendants are found liable for the failure to protect Konitzer, defendants point out that the prior and current relationship and communications between the two inmates would be relevant to the issue of damages.

Konitzer vehemently objects to the stay in a lengthy brief in which she accuses defendants of fabricating evidence that the attack was a sham, and she complains about their failure to produce certain documents; Konitzer, however, has failed to show that a stay of a few months would result in undue prejudice.² Konitzer’s evidence is derived from her self-reports. This is not a case where the memories of his witnesses will fade or documents will be lost. Konitzer is in control of all of the evidence relevant to the prosecution of his case. Her claims

² Defense counsel has averred that the trial in Balsewicz’s criminal case should occur in late summer or early fall of 2012.

that defendants' theory is incorrect will be dealt with on summary judgment or at trial, once all of the relevant evidence becomes available. Because Balsewicz's testimony and the documents in his possession constitute critical relevant evidence, a stay is warranted.

Defendants are directed to inform the court as soon as they learn the trial date in Balsewicz's case. If the court has not heard from defendants before September 14, 2012, it will schedule a status conference to get an update from the parties and consider whether the stay should be continued or lifted.

II. Motion to Supplement Complaint

Because the supplemental complaint is Konitzer's third proposed amendment to her complaint, she must have leave of court to add the new claims. *See* Fed. R. Civ. P. 15(a). In the supplement to her complaint, plaintiff alleges that since she complained about the November 12, 2010 attack by Balsewicz, defendants Martin, Keller and Nickel and the two new defendants have filed false conduct reports against her, leading to her placement in segregation. Dkt. 90.

Having reviewed Konitzer's supplement, I conclude that she cannot proceed on any claims at this time because the supplement violates Fed. R. Civ. P. 20. Rule 20 prohibits a plaintiff from asserting unrelated claims against different defendants or sets of defendants in the same lawsuit. Multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each defendant that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); 3A *Moore's Federal Practice* § 20.06, at 2036-2045 (2d ed. 1978). Here, the attack on Konitzer and the later alleged

retaliation against her for the filing of grievances are separate incidents that present different questions of law and fact.

Although Fed. R. Civ. P. 18 allows a party to join unrelated claims against defendants in a suit, this rule applies only after the requirements for joinder of parties have been satisfied under Rule 20, *Intercon Research Assn., Ltd. v. Dresser Ind., Inc.*, 696 F.2d 53, 57(7th Cir. 1983), which means that the core set of allowable defendants must be determined under Rule 20 before a plaintiff may join additional unrelated claims against one or more of those defendants under Rule 18. This means also that under Rule 18, a party cannot join claims involving any defendant outside the group identified under Rule 20. Although the core defendants in the instant lawsuit include defendants Martin, Keller and Nickel, Konitzer cannot add claims against two new defendants, who are not part of the core set of allowable defendants in this case.

Applying Rules 18 and 20 to the factual allegations in the complaint, I conclude that Konitzer faces two choices:

- (1) File an amended complaint in this lawsuit bringing additional claims of retaliation against only defendants Martin, Keller and Nickel; or
- (2) File a new lawsuit alleging that defendants Martin, Keller and Nickel and the two new defendants retaliated against Konitzer for filing grievances related to the November 2010 attack.

Because the court has stayed proceedings in this case, any proposed amended complaint—or any other request or motion—that Konitzer files will not be addressed by the court until the stay is lifted.

III. Motions for Investigatory Hearing and Sanctions

I understand Konitzer to be alleging that defendants fabricated correspondence between Balsewicz and Konitzer in an attempt to show that the two inmates jointly planned the attack. A reading of Balsewicz's deposition indicates that defendants possess some of these letters but have been refused access to other correspondence between the inmates because Balsewicz has taken the Fifth.

The court cannot assist Konitzer with filing or investigating criminal charges against counsel, the defendants or anybody else; if she is intent on pursuing charges, then she should contact the proper state or federal law enforcement authorities. As far as Konitzer's motion for sanctions, Konitzer fails to develop evidence or argument as to why sanctions are warranted. All Konitzer has presented in support of her motions is her unsubstantiated say-so. Further, without testimony from Balsewicz, one of the main authors of the letters in question, it would be impossible to attempt to verify these documents. As explained above, these issues are best resolved on summary judgment or at trial after all of the relevant evidence becomes available. At that point, Konitzer may challenge the authenticity of any documents that defendants seek to admit into evidence with evidence of her own. Accordingly, I must deny the motions.

IV. Motion to Seal

Konitzer asks to seal docket entries 68-71 because they contain allegations against her of a very private nature. After reviewing the documents in question, I agree that certain exhibits to the deposition of Balsewicz contain personal and private information about Konitzer. As a result, I will order the following docket entries to be placed under seal: exhibit 3 to dkt. 70 and

exhibit 1 to dkt. 71. However, because defendants' motion to stay (dkt. 68), their brief in support of that motion (dkt. 69), the affidavit of Monica Burkert-Brist and the first two exhibits to that affidavit (dkt. 70 and exh. 1 and 2) and Balsewicz's deposition (dkt. 71) do not contain the information that Konitzer seeks to remain private, her motion to seal those documents will be denied.

ORDER

IT IS ORDERED that

- (1) Defendants' motion to stay (dkt. 68) proceedings in this case is GRANTED. Defendants are ordered to advise the court as soon as they learn the date of the criminal trial in Columbia County Circuit Court, Case No. 11-CF-151;
- (2) Plaintiff Scott (Donna Dawn) Konitzer's motion to supplement the complaint (dkt. 89) is DENIED;
- (3) Plaintiff's ex parte request (dkt. 81) and motions for inquest hearing and Rule 11 sanctions (dkts. 98-99) are DENIED; and
- (4) Plaintiff's motion to seal (dkt. 100) is GRANTED with respect to Exhibit 3 to dkt. 70 and Exhibit 1 to dkt. 71 and DENIED in all other respects.

Entered this 25th day of May, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge