

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

LUIS VASQUEZ, DAVID GREENWOOD,
JAVIER SALAZAR, JULIAN LOPEZ
and ANTHONY RIACH,

Plaintiffs,

v.

DANIEL BRAEMER, DON STRAHOTA,
WILLIAM POLLARD, PAMELA ZANK
and MICHAEL THURMER,

Defendants.

ORDER

11-cv-806-bbc

This is a group civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983 by plaintiffs Luis Vasquez, David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach regarding the allegedly harsh conditions of segregation at the Waupun Correctional Institution. Plaintiffs are proceeding on claims that defendants Daniel Braemer, Don Strahota, William Pollard, Pamela Zank and Michael Thurmer acted with deliberate indifference to their mental health needs by subjecting them to unconstitutional conditions of confinement in segregation. In particular, plaintiffs contend that defendants were aware that the harsh conditions confinement exacerbated plaintiffs' mental illnesses and caused plaintiffs to experience numerous physical health problems.

Now before the court is plaintiffs' motion to amend the complaint to add several new

defendants and claims. Dkt. #46. In particular, plaintiffs wish to add Jeffrey Garbelman, Gary Ankarlo, Jenny Fuerstenberg, Michael Meisner, Gene Braaksma, Ryan Tobiasz, Charles Grisdale, Deborah Fisher, Steve Wierenga and Ralph Froelich as defendants. (Not all plaintiffs wish to add all of the proposed new defendants. For example, plaintiff Vasquez seeks to add Garbelman, Ankarlo, Froelich and Wierenga as defendants, while plaintiff Greenwood seeks to add Meisner, Garbelman and Tobiasz as defendants.). Additionally, plaintiffs seek to add claims against certain defendants for (1) causing plaintiffs to suffer from seasonal affective disorder; (2) using inappropriate restraining devices; (3) deprivation of contact with visitors; (4) limited canteen; (5) limited phone calls; (6) punishing plaintiffs to being mentally ill; (7) failure to protect plaintiffs from harming themselves; and (8) improper ventilation.

At this stage in the case, 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).

I am denying plaintiffs' motion because they waited far too long to seek leave to amend their complaint. They did not seek to file the amendment until seven months after

they were granted leave to proceed on the claims in their second amended complaint and more than four months after defendants filed an answer. Now this case has been pending for more than a year, and allowing plaintiffs to amend their complaint at this stage to add several new defendants and claims would almost certainly require the court to set a new schedule. Under the current schedule, the deadline for summary judgment motions is less than three months away. There is little chance the parties could meet this deadline if the case expanded to include several new claims and defendants.

Moreover, adding so many new claims and defendants would expand dramatically an already complicated case. As I explained to plaintiffs in the order granting them leave to proceed, plaintiffs will have to prove that their conditions of confinement caused or contributed to the mental and physical health issues that they have alleged. Additionally, they will have to prove that each of the defendants acted with “deliberate indifference,” which means that each of the defendants knew that plaintiffs had serious mental health needs and consciously disregarded those needs by failing to take reasonable measures to address it. Guzman v. Sheahan, 495 F.3d 852, 859 (7th Cir. 2007). This will not be easy. Allowing plaintiffs to amend their complaint at this stage would increase the complexity of the case significantly and would likely make this case unmanageable. Accordingly, I am denying plaintiffs’ motion. The amended complaint from February 6, 2012 remains the operative pleading in this case.

ORDER

IT IS ORDERED that the motion to amend the complaint, dkt. #46, filed by plaintiffs Luis Vasquez, David Greenwood, Javier Salazar, Julian Lopez and Anthony Riach is DENIED.

Entered this 18th day of January, 2013.

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