

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

PHILIP PATRICK SHEAHAN,

Plaintiff,

v.

DR. SULIENE, HSU Manager N. WHITE,
JOHN DOE NURSE, DR. SPRIGS and
CAPTAIN D. MORGAN,

Defendants.

ORDER

12-cv-433-bbc

In an October 31, 2012 order, I granted plaintiff Philip Sheahan leave to proceed on his Eighth Amendment deliberate indifference claims against defendants N. White, Dr. Suliene, Dr. Springs and John Doe Nurse, as well as his First Amendment retaliation claims against Springs and Doe. I stayed a decision on plaintiff's request for leave to proceed on his state law medical negligence claims, and gave him a short period of time to supplement his complaint with information about his compliance with notice requirements under Wis. Stat. § 893.82(3m). (“[P]risoner may not commence the civil action or proceeding until the attorney general denies the claim or until 120 days after the written notice under sub. (3) is served upon the attorney general, whichever is earlier.”)

Now plaintiff has submitted a supplement to his complaint including documentation about his notice of claim, but I will deny the motion as moot. I conclude that such documentation is irrelevant because I erred in concluding that Wis. Stat. § 893.82(3m)

might bar plaintiff from bringing his claim. Another section of the notice of claim statute, Wis. Stat. § 893.82(5m), states, “With regard to a claim to recover damages for medical malpractice, the provisions of subs. (3), (3m), and (4) do not apply.”

Therefore, I can proceed to screen plaintiff’s medical malpractice claims against defendants Suliene and Nurse Doe. To prevail on a claim for negligence or medical malpractice in Wisconsin, plaintiff must prove that defendants breached their duty of care to him and that he suffered injury as a result. Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860. At this stage of the proceedings, it is possible to infer negligence from plaintiff’s allegations that defendant Suliene would not order a work restriction for plaintiff after he suffered major injuries to his hand, and that Nurse Doe removed his stitches early. Therefore, plaintiff may proceed on his state law negligence claims against these defendants.

ORDER

IT IS ORDERED that

1. Plaintiff Philip Sheahan is GRANTED leave to proceed on his Eighth Amendment deliberate indifference claims against defendants N. White, Dr. Suliene, Dr. Springs and John Doe Nurse, First Amendment retaliation claims against Springs and Doe and medical negligence claims against Suliene and Nurse Doe.

2. Plaintiff’s motion to supplement his complaint, dkt. #8, is DENIED as moot.

3. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to

the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service on behalf of the state defendants.

4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. Plaintiff is obligated to pay the balance of his unpaid filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

Entered this 30th day of November, 2012.

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