

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

MUSTAFA-EL K.A. AJALA
f.k.a. Dennis E. Jones-El, and
SPENCER A. BROWN,

Plaintiffs,

v.

KELLI WEST, RICK RAEMISCH,
TODD OVERBO, CATHY JESS,
PETER HUIBREGTSE, TIM HAINES,
CHARLES COLE and ANTHONY BROADBENT,

Defendants.

ORDER

13-cv-184-bbc

In an order dated August 12, 2013, dkt. #17, I allowed plaintiffs Mustafa-El K.A. Ajala and Spencer Brown to proceed on a number of claims related to plaintiffs' observance of Ramadan at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Now plaintiffs have filed what they call a "motion to supplement their civil complaint," along with a proposed supplement. Dkt. #29.

Plaintiffs' proposed supplement relates to one claim they brought under the Religious Land Use and Institutionalized Persons Act, the free exercise clause, the establishment clause and the equal protection clause that prison officials allegedly failed to give them adequate notice of a requirement to request Ramadan meals in 2012 and then refused their requests as untimely. I dismissed the claim with respect to RLUIPA for failure to state a claim upon

which relief may be granted because Ajala did not identify a substantial burden on his religious exercise and neither plaintiff identified a need for an injunction or declaration, the only relief authorized under RLUIPA. With respect to Ajala's claim, I stated that

Ajala does not deny that he received the notice on June 20 saying that he was required to submit a request by June 25. Although five days is a relatively short period of time, plaintiff does not identify any reason that he could not comply with the deadline, so he has not alleged that defendants substantially burdened his religious exercise by imposing the deadline.

Dkt. #17 at 10. With respect to Brown's claim, I stated that

Brown alleges that he did not receive timely notice because he was housed in the "entry" unit, which does not have televisions, but he does not allege that he is still in that unit or suggest that there is a significant chance that he will return to that unit.

In any event, Brown does not need prison officials to tell him when Ramadan begins. Now that he knows that he is required to submit an accommodation request to receive Ramadan meals, he can do so on his own without waiting to receive notice from the prison.

Dkt. #17 at 11-12.

I dismissed the claim with respect to the free exercise clause and the establishment clause because plaintiffs did not identify any alleged religious discrimination. In addition, in discussing plaintiff Brown's claim, I stated that

it would not necessarily be unreasonable for defendants to enforce the deadline [for requesting Ramadan meals] against Brown, even if it is true that he was not aware of the deadline. The proper defendants in that case would not be the officials who applied an otherwise valid rule, but the person or persons responsible for failing to provide adequate notice to plaintiff about the rule. Plaintiffs do not identify who those officials might be and they do not seem to be asserting a claim against any John Doe defendants.

Dkt. #17 at 12.

I allowed plaintiffs to proceed on a claim under the equal protection clause because they alleged that defendant Todd Overbo had allowed white prisoners to submit late requests for Ramadan meals but had denied similar requests from plaintiffs.

In their proposed supplement, plaintiffs seem to be attempting to revive at least some of these claims, though they do not say that expressly. First, they say that defendant Overbo denied plaintiff Ajala's Ramadan meal request, not because Ajala submitted the request after the June 25 deadline, but because it was submitted less than 30 days before Ramadan began on July 20, even though it was not until June 20 that prisoners received notice from the prison that they were required to submit a request. Second, they say that "a Muslim prisoner knowing when Ramadan is is not enough to adequately request accommodation because the prison, WSPF in this case, may not be accepting requests at the time requested, and notice is the only way the prisoner can know when they are." Dkt. #29-1 at 2. Third, plaintiffs seek to add the allegation that defendant Overbo was responsible for giving prisoners notice of the deadline for requesting Ramadan meals.

I am denying plaintiffs' motion for two reasons. First, the type of supplemental pleading plaintiffs wish to file is not permitted by the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 15(d), a party may file a supplemental pleading "setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." However, plaintiffs do not suggest that they are raising new claims relating to new incidents; rather, it seems that they want add more allegations to their existing claims.

As I have informed other pro se plaintiffs, “parties are not allowed to amend a pleading by simply adding to or subtracting from the original pleading in subsequent filings scattered about the docket. If [plaintiffs] wish to amend their complaint, they must file a proposed amended complaint that will completely replace the original complaint. . . . [T]here can be only one operative complaint in the case.” Boriboune v. Berge, No. 04-C-15-C, 2005 WL 256525, *1 (W.D. Wis. Jan. 31, 2005). The reason for such a rule is plain enough. If the “operative pleading” consists of multiple documents, the scope of the plaintiff’s claims becomes unclear and it becomes difficult if not impossible for the defendants to file an answer. To avoid ambiguity, the complaint must be self-contained.

In any event, even if plaintiffs had followed the proper procedure in filing an amended complaint, I would deny the motion as futile. Campania Management Co. v. Rooks, Pitts & Poust, 290 F.3d 843, 848-49 (7th Cir. 2002). With respect to a RLUIPA claim, none of the plaintiffs’ new allegations suggest that the problems they experienced with receiving notice in 2012 are likely to recur, so injunctive or declaratory relief would not be appropriate. With respect to a claim under the free exercise clause or the establishment clause, the new allegations do not suggest that defendants discriminated against plaintiffs on the basis of religion.

ORDER

IT IS ORDERED that plaintiffs Mustafa-El K.A. Ajala’s and Specer Brown’s motion

to supplement the complaint, dkt. #29, is DENIED.

Entered this 23d day of December, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge