

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

JOSHUA CHEEK,

Plaintiff,

v.

JEN BEEMAN,

Defendant.

ORDER

13-cv-527-bbc

In this civil lawsuit, pro se plaintiff Joshua Cheek is proceeding on claims of excessive force, battery and denial of medical care against defendant Jen Beeman stemming from an altercation at the Mendota Mental Health Institute. Plaintiff has sought leave to add claims against additional defendants for retaliation and denial of access to the courts claims, as well as state law conspiracy claims related to the retaliation. As discussed in my previous orders, dkt. ##35, 42, 52, most of these claims do not have either a defendant or a question of law or fact in common with plaintiff's pending case, so adding them would violate Fed. R. Civ. P. 20. Accordingly, I have denied plaintiff's motions. Now plaintiff has moved again for reconsideration, dkt. ##55-57, saying that one set of claims on retaliation and conspiracy *does* include defendant Jen Beeman.

In plaintiff's amended complaint, dkt. #27, and supplement, dkt. #37, which together serve as the operative pleading in this case, plaintiff alleges that Beeman told three

staff members at the Mendota Mental Health Institute not to let plaintiff file any complaints, grievances or reports about the incident. Dkt. #37, at 2. This allegation is sufficient to state a claim for retaliation against plaintiff's for exercising his First Amendment rights to speech. Kaufman v. Schneider, 474 F. Supp. 2d 1014, 1023 (W.D. Wis. 2007) ("To state a retaliation claim, a prisoner must allege that he engaged in constitutionally protected conduct and that his protected actions prompted one or more prison officials to take adverse action against him."). In addition, this allegation states a claim for civil conspiracy under Wisconsin state law. Onderdonk v. Lamb, 79 Wis. 2d 241, 247, 255 N.W.2d 507, 510 (1977) ("To state a cause of action for civil conspiracy, the complaint must allege: (1) the formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting from such act or acts."). (I also note that plaintiff attached his untimely notice of claim letter to the supplement, dkt. #37, which includes facts about the staff members' refusal to allow plaintiff to file a lawsuit or press charges about the incident. In a previous order, I concluded that this notice of claim letter was sufficient to allow plaintiff to proceed at this stage of the proceeding. Dkt. #42.)

Therefore, I will grant plaintiff's motion for reconsideration and allow him to proceed on these claims against defendant Beeman and her alleged conspirators Clair Kruger, Sara Conklin and "Heather." (Plaintiff has not alleged Heather's last name but other identifying information: she is a social worker on unit "PTU" at the Mendota Mental Health Institute. Should defendants refuse to accept service on Heather's behalf, plaintiff will be given an opportunity to ascertain Heather's identity by way of discovery requests on defendants.

Although defendant Beeman has filed a motion for summary judgment as to plaintiff's medical care claim, the dispositive motion deadline is not until September 15, 2014, so the schedule allows sufficient time to accommodate these additional claims.

As to the other aspects of plaintiff's motions for reconsideration, plaintiff does not allege facts that would change my decision to deny him leave to amend. First, plaintiff says that evidence for his present lawsuit has been destroyed by proposed defendants, but he does not explain what the evidence is or how its loss has affected the outcome of his case or might affect it in the future. Thus, he still has not alleged an actual injury or a way in which he has been prevented from prosecuting his present lawsuit. Second, plaintiff alleges new facts: staff members at his new institution, the Wisconsin Resource Center, are retaliating against him for filing this lawsuit by denying him religious expression and treating him differently from other inmates with respect to his mental health treatment.

As an initial matter, plaintiff has been warned that he may not supplement his complaint with new allegations in this piecemeal fashion. Moreover, these new allegations have no direct relation to his present lawsuit and do not have any defendants in common, so adding them would violate Fed. R. Civ. P. 20. For these reasons, plaintiff's motions will be denied as to these other claims.

To sum up, plaintiff is proceeding on excessive force, deliberate indifference and battery claims related to the bite incident against Beeman on retaliation and conspiracy claims against Beeman, Kruger, Conklin and Heather. He is not proceeding on any other claims against any other defendants. I consider the pleadings closed and will not consider

any further orders on any additional motions to reconsider that plaintiff may file.

ORDER

IT IS ORDERED that

1. Plaintiff Joshua Cheek's motions for reconsideration, dkt. ##55-57, are GRANTED as to his retaliation and state law conspiracy claims against defendants Jen Beeman, Clair Kruger, Sara Conklin and Heather and he is GRANTED leave to proceed on these claims. Kruger, Conklin and Heather will be added to the case as defendants. Plaintiff's motions, dkt. ##55-57, are DENIED in all other respects.

2. Pursuant to 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 defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 21 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 for defendants.

3. Because I consider the pleadings closed, any additional motions for reconsideration of the screening order filed by plaintiff will be routed directly to chambers. If no action is

taken,they will be deemed rejected on the 30th day following receipt.

Entered this 5th day of May, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge