

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

JEFFREY M. DAVIS, JR.,

Plaintiff,

v.

DIVINE SAVIOR HOSPITAL,
DR. JACKSON, DR. CHARLES BOURSIER
and DR. GERALD KRUMPOS,

Defendants.

OPINION and ORDER

13-cv-101-wmc

State inmate Jeffrey M. Davis Jr. has been granted leave to proceed with claims against defendant Divine Savior Hospital under the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd, as well as state law claims of medical malpractice and battery against three emergency room doctors, Dr. Thomas V. Jackson, Dr. Charles Boursier, and Dr. Gerald Krumpos. The claims stem from three separate suicide attempts by Davis at the Columbia Correctional Institution.

There are several pending motions in this case. Davis has requested a preliminary injunction. (Dkt. # 4). He has not, however, filed a specific motion or brief in support of that request and he has not otherwise complied with the court’s order to do so. Accordingly, Davis’s motion for a preliminary injunction will be denied.

Dr. Krumpos has filed a separate motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5) on the grounds that he was not properly served in this case. (Dkt. # 34). Because it is evident from his submission that he was not properly served, the court will grant Dr. Krumpos’s motion to dismiss.

Divine Savior Hospital, Dr. Boursier and Dr. Jackson have filed a joint motion asking the court (1) to dismiss the EMTALA claim for failure to state a claim upon which relief may be granted, Fed. R. Civ. P. 12(b)(6); and (2) to decline supplemental jurisdiction over the state law medical negligence claims for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1) and 12(h)(2). (Dkt. # 30). These defendants have submitted medical records under seal, documenting the treatment that Davis received at Divine Savior Hospital following the suicide attempts referenced in his complaint. (Dkt. # 32).

Davis has not filed a response to defendants' motion. Instead, Davis has filed a motion to voluntarily dismiss this case without prejudice. (Dkt. # 39). Divine Savior Hospital, Dr. Boursier and Dr. Jackson oppose Davis's request for a dismissal without prejudice for reasons they have outlined in supplemental motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6). (Dkts. # 41, # 45).

Although the medical records appear to cast doubt on the validity of Davis's claims, the court cannot reach those exhibits without first converting the motion under Fed. R. Civ. P. 12(b)(6) into a motion for summary judgment. *See Gomez v. Illinois State Bd. of Educ.*, 811 F.2d 1030, 1039 (7th Cir. 1987) ("the record under 12(b)(6) is limited to the language of the complaint and to those matters of which the court may take judicial notice"); *see also Burke v. 401 N. Wabash Venture, LLC*, 714 F.3d 501, 505 (7th Cir. 2013) (recognizing that only "a limited class of attachments" may be submitted along with a motion to dismiss pursuant Fed. R. Civ. P. 12(b)(6)). The court declines to convert the motion in an instance in which the plaintiff has indicated an inability or

unwillingness to proceed. Therefore, the court will grant Davis's motion to voluntarily dismiss his complaint without prejudice and will deny the motion to dismiss filed by Divine Savior Hospital, Dr. Boursier and Dr. Jackson as moot.

ORDER

IT IS ORDERED that:

1. The motion by plaintiff Jeffrey M. Davis for a preliminary injunction (dkt. # 4) is DENIED.
2. The motion to dismiss by Dr. Gerald Krumpos for insufficient service of process (dkt. # 34) is GRANTED.
3. The motion for voluntary dismissal by plaintiff Davis (dkt. # 39) is GRANTED and this case is DISMISSED without prejudice.
4. The motion to dismiss, supplemental motion to dismiss and motion to seal exhibits filed by Divine Savior Hospital, Dr. Boursier and Dr. Jackson (dkt. # 30, # 32 and # 41) are DENIED as MOOT.

Entered this 24th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge