

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

TIMOTHY LEE STEWART, SR.,

Plaintiff,

v.

OPINION and ORDER

ROCK COUNTY HUMAN SERVICES
DEPARTMENT,

22-cv-519-jdp

Defendant.

Plaintiff Timothy Lee Stewart, Sr., appearing pro se, alleges that his protected medical information held by Rock County personnel was disclosed in a data breach. I dismissed Stewart's original complaint because his allegations failed to state a claim upon which relief might be granted, and I gave him an opportunity to file an amended complaint. Dkt. 4.

Stewart has responded by filing several documents: an amended complaint and supplement to the complaint, Dkts. 6 and 7, and two motions for the court's assistance in recruiting him counsel, Dkts. 5 and 8. Stewart continues to fail to state a claim for relief that can be heard in this federal court, so I will dismiss the case. I will also deny his motions for recruitment of counsel.

Stewart's amended complaint and supplement have the same core problem as his original complaint: he doesn't state a federal claim for relief. He continues to allege that the county negligently failed to prevent hackers from obtaining his records, but "negligence, even gross negligence, does not violate the Constitution." *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). And the unidentified "John Doe" hackers he attempts to add as defendants were not operating "under color" of state law as required to name them as defendants in a federal civil rights action under 42 U.S.C. § 1983.

Stewart alleges that the hackers stole something of value from him and that the county negligently allowed it to happen and breached a contract it had with Stewart to keep his information safe. Those allegations might state claims for relief under Wisconsin law, but this court cannot exercise diversity jurisdiction over the case because the parties are not citizens of different states. Generally, “John Doe’ defendants are not permitted in federal diversity suits” because their citizenship is unknown. *See Howell by Goerd v. Tribune Entm't Co.*, 106 F.3d 215, 218 (7th Cir. 1997) (citing cases). But even without the Does, Stewart says that he is a Wisconsin citizen, so he and the county are from the same state.

Stewart also asks for the court’s assistance in recruiting him counsel in this case and others he has recently filed in this court.¹ Ordinarily this court considers recruiting counsel for a plaintiffs on a case-by-case basis; absent unusual circumstances not present here the court won’t recruit counsel for a plaintiff’s multiple cases all at the same time. I will limit my analysis to Stewart’s request in this case only. If he seeks counsel for one of his other cases he will have to file a separate motion pertaining to that particular case.

I will deny Stewart’s motion in this case because recruiting counsel for him would be futile. Even after amending his complaint it is clear that his allegations do not state a federal claim for relief and that this court cannot exercise diversity jurisdiction over potential state-law claims. Because counsel would not be able to fix these problems, I will deny his motions for recruitment of counsel and dismiss the case.

¹ In one of Stewart’s filings he mentions Case Nos. 21-cv-555-jdp; 21-cv-764-jdp; 22-cv-486-jdp; and 22-cv-490-jdp in addition to this case.

ORDER

IT IS ORDERED that:

1. This case is DISMISSED. The clerk of court is directed to enter judgment for defendant and close the case.
2. Plaintiff's motions for the court's assistance in recruiting him counsel, Dkts. 5 and 8, are DENIED.

Entered October 26, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge