

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

VALIANT GREEN,

Plaintiff,

v.

DAVID G. BETH, BRAD HEILET,
DAVE LIANEU, JANE AND/OR JOHN
DOE NURSING STAFF and
JOHN DOE FOOD VENDOR/DISTRIBUTOR,

Defendants.

ORDER

15-cv-540-bbc

Pro se prisoner and plaintiff Valiant Green has raised the following claims in his amended complaint: (1) plaintiff damaged his teeth after biting down on a rock in his food because defendants David Beth (the sheriff), Brad Heilet (a lieutenant) and Dave Lianeau (the kitchen manager) failed to properly screen the food at the Kenosha County Detention Center or otherwise take steps to protect prisoners from unsafe food, in violation of the Eighth Amendment and Wisconsin common law negligence; (2) an unknown food vendor or distributor failed to prepare or screen the food properly, in violation of Wisconsin common law negligence; (3) an unknown nurse or nurses refused to provide treatment to plaintiff for several days after he damaged his teeth, in violation of the Eighth Amendment and the Wisconsin common law of negligence; and (4) after examining plaintiff, an unknown nurse or nurses refused to schedule an appointment with the dentist for one month, in

violation of the Eighth Amendment and the Wisconsin common law of negligence.

In an order dated January 2016, dkt. #19, I dismissed plaintiff's federal claim against Beth, Heilet and Lianeau for failure to state a claim upon which relief may be granted. I dismissed plaintiff's federal claims against the nurses on the ground that he failed to provide enough information about those claims. I dismissed the state law claims against all defendants under 28 U.S.C. § 1367(c)(3), which allows a federal court to relinquish supplemental jurisdiction over state law claims when all federal claims are dismissed early in the case. Segal v. Geisha NYC LLC, 517 F.3d 501, 506 (7th Cir. 2008).

Plaintiff appealed the decision. The Court of Appeals for the Seventh Circuit concluded that plaintiff should be allowed to proceed on his claims that defendants Beth, Heilet and Lianeau violated the Eighth Amendment by failing to properly screen the jail's food and that an unknown nurse or nurses refused to provide medical treatment for six days after plaintiff broke his tooth. Green v. Beth, No. 16-1714, 2016 WL 5323263 (7th Cir. Sept. 22, 2016). The court of appeals did not discuss plaintiff's claim that an unknown nurse or nurses refused to schedule a dentist appointment, so I assume that plaintiff abandoned that claim on appeal. Although the court of appeals did not discuss plaintiff's state law claims either, I assume that was because I did not consider the merits of those claims but only dismissed them because I dismissed the federal law claims. Because the standard for proving negligence is more lenient than the standard for proving an Eighth Amendment violation, it follows from the decision of the court of appeals that plaintiff should be allowed to proceed on his state law claims as well.

In its decision, the court of appeals directed this court to reconsider plaintiff's request for assistance in recruiting counsel. Id. at *3. As I noted in the January 2016 order, because plaintiff knows so little information about his own claims, he is likely to face difficult challenges in gathering the facts he needs, even with counsel. Without counsel, there is little chance that plaintiff could conduct the discovery that he needs even to identify the proper defendants. Accordingly, I will stay further proceedings in this case while searching for counsel willing to represent plaintiff.

ORDER

IT IS ORDERED that

1. Plaintiff Valiant Green is GRANTED leave to proceed on the following claims: (1) defendants David Beth, Brad Heilet and Dave Lianeau failed to properly screen the food at the Kenosha County Detention Center or otherwise take steps to protect prisoners from unsafe food, in violation of the Eighth Amendment and Wisconsin common law negligence; (2) an unknown food vendor or distributor failed to prepare or screen the food properly, in violation of Wisconsin common law negligence; and (3) an unknown nurse or nurses refused to provide treatment to plaintiff for several days after he damaged his teeth, in violation of the Eighth Amendment and the Wisconsin common law of negligence.

2. This case is STAYED pending recruitment of counsel for plaintiff. If I find counsel willing to represent plaintiff, I will advise the parties of that fact. Soon thereafter, a status

conference will be held to set a new schedule.

Entered this 31st day of October, 2016.

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