

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

DARREYLL T. THOMAS,

Plaintiff,

v.

MEREDITH MASHAK, GWEN SCHULTZ
EDWARD WALL, JAMES GREER
and DAVID BURNETTE,

Defendants.

ORDER

16-cv-496-bbc

Pro se plaintiff Darreyll Thomas is proceeding on the following two claims: (1) defendants Edward Wall, James Greer and David Burnette failed to enact policies or procedures to prevent prisoners from being harmed when there is a medication shortage, in violation of the Eighth Amendment and Wisconsin's common law of negligence; and (2) defendants Meredith Mashak and Gwen Schultz refused to help plaintiff when he complained about not receiving his medication, in violation of the Eighth Amendment and Wisconsin's common law of negligence. Now plaintiff has filed a motion for judgment on the pleadings. Dkt. #16.

This is the second motion for judgment on the pleadings that plaintiff has filed. As I explained to plaintiff in the order denying his first motion, dkt. #8 at 2, plaintiff would be entitled to judgment on the pleadings only if defendants admitted in their answers all of the

facts that plaintiff is required to prove in order to prevail on his claim. Not surprisingly, defendants did *not* admit all of plaintiff's allegations in their answers. In fact, plaintiff does not even cite defendants' answers in his motion. Rather, plaintiff's four-page motion is nothing but a collection of legal conclusions. Because these statements are not a substitute for real proof, I am denying the motion again.

Plaintiff includes a statement in his motion that he "now dismisses with prejudice any and all claims related to Mr. Edward Wall and Mr. David Burnette." Dkt. #16 at 1. I am construing this statement as motion for voluntary dismissal of the complaint as to defendants Wall and Burnette and I am granting the motion.

ORDER

IT IS ORDERED that

1. Plaintiff Darreyll Thomas's motion for judgment on the pleadings, dkt. #16, is DENIED.

2. Plaintiff's motion to dismiss the complaint with prejudice as to defendants Edward Wall and David Burnette, dkt. #16, is GRANTED.

Entered this 1st day of December, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge