

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

CHRISTOPHER SCARVER,

Plaintiff,

ORDER

v.

01-C-0497-C

JON LITSCHER, GERALD BERGE,
PETER HUIBREGTSE, JEFF HRUDKA,
VICKI SEBASTIAN, LINDA OATMAN, BRIAN
KOOL, GARY BLACKBOURN, HANSON,
MILES, STEPHEN .M. PUCKETT, WALTZ and HOLDEN,

Defendants.

Plaintiff was allowed to proceed in forma pauperis in this civil action on his claim that defendants violated his Eighth Amendment right to be free from cruel and unusual punishment by acting with deliberate indifference to his serious mental health care needs. On August 5, 2002, I appointed Allen Arntsen, a member of the Madison law firm of Foley & Lardner, as plaintiff's lawyer. On October 21, 2002, plaintiff, through his counsel, filed an amended complaint refining the allegations supporting his Eighth Amendment claim, dropping as defendants Twyla Hagen, Tim Haines and John Does 1-100, and adding as defendants Peter Huibregtse, Jeff Hrudka, Vicki Sharpe, Linda Lane, Brian Kool, Hanson,

Miles, S.M. Puckett, Waltz and Holden in their official and individual capacities. On November 1, 2002, Assistant Attorney General Andrea Baker stipulated on behalf of the defendants to the filing of the amended complaint. Subsequently, on November 22, 2002, all of the defendants except defendants Hanson, Miles, Waltz and Holden answered plaintiff's amended complaint. In their answer, defendants point out that defendant Vicki Sharpe's last name is now Sebastian, defendant Linda Lane's last name is now Oatman and defendant S.M. Puckett's first name is Stephen. The caption of this order has been changed accordingly and all future orders will reflect these corrections.

The record reveals that on November 27, 2002, "defendants" moved for summary judgment. Before the deadline for opposing the motion had passed, the parties filed a stipulation and a request for an order staying proceedings pending resolution of confinement issues affection plaintiff in the class action lawsuit of Jones' El v. Berge, 00-C-421-C. On March 18, 2003, I granted the request for a stay and closed the case administratively, "with the parties retaining full rights to reopen it anytime upon a showing of good cause."

On July 28, 2004, the Court of Appeals for the Seventh Circuit decided the last of the issues raised on appeal in Jones'El. In none of the appeals was it necessary for the court to resolve the question whether the defendants in this case violated plaintiff's Eighth Amendment rights by acting with deliberate indifference to his serious mental health care needs while he was confined at the Wisconsin Secure Program Facility. Now plaintiff has

written a letter to the court in which he requests that this case be reopened so that he can continue to prosecute his claims for money damages. He concedes that his claims for injunctive relief have been mooted by his transferred out of the Facility. In addition, he asks for the appointment of counsel to represent him. He appears to believe that Mr. Arntsen is no longer willing to represent him. He is mistaken. The court has confirmed that Mr. Arntsen is willing to continue to represent plaintiff if this case is reopened.

In light of the fact that not all of the issues raised in this case were resolved by the court of appeals in Jones'El v. Berge, I find that there is good cause for reopening this case. Therefore, I will grant plaintiff's request.

In order to get this case back on track as quickly as possible, I will request the clerk of court to set a prompt scheduling conference before Magistrate Judge Stephen Crocker so that he can schedule a new trial date and establish deadlines for completing briefing on the motion for summary judgment and finishing discovery. In addition, the magistrate judge is requested to explore with the parties the status of defendants Hanson, Miles, Waltz and Holden. In particular, he is asked to determine from the parties whether plaintiff has abandoned his claims against defendants Hanson, Miles, Waltz and Holden and, if not, whether these defendants have been served with plaintiff's complaint, whether they are represented by the office of the Attorney General and whether they are presently in default for failing to respond to the amended complaint.

Plaintiff is reminded that because he is represented by counsel, he may no longer communicate with the court directly about his case. Instead, he is to work with Mr. Arntsen and allow Mr. Arntsen to file only those motions, documents, and other papers that in his professional judgment he deems to be appropriate to file in the case.

ORDER

IT IS ORDERED that plaintiff's motion to reopen this case is GRANTED. The clerk of court is requested to set a prompt scheduling conference before Magistrate Judge Stephen Crocker.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge