

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

STEVEN CASPERSON, MATTHEW FRANK,
JON E. LITSCHER, LAURA WOOD,
GERALD BERGE, PETER HUIBREGTSE,
GARY BOUGHTON, VICKI SEBASTIAN,
CPT. TIMOTHY HAINES, LINDA HODDY,
CINDY O'DONNELL, LT. GARDINER,
JULIE BIGGAR, SGT. HANKE, TODD OVERBO,
SANDRA GRONDIN, JOANNE GOUIERE (JANE DOE),
JOHN DOE #'S 6 and 8, ELLEN RAY,
GARY McCAUGHTRY, MARC CLEMENTS,
DEBRA TETZLAFF, CPT. STEVE SCHUELER,
C.O. WATSON, CHAPLAIN FRANCIS,
BYRON BARTOW, KATHLEEN BELLAIRE,
and STEVE SPANBAUER,

Defendants.

ORDER

02-C-473-C

Plaintiff has filed a second motion for permission to file a third amended complaint. The majority of the changes plaintiff appears to want to make are either insignificant, unnecessary (such as descriptions of his damages), or repetitive of claims I have already

considered and rejected as legally meritless. Other changes appear to be attempts at expanding plaintiff's claims to include new legal theories of constitutional wrongdoing and reasserting claims of wrongdoing against defendants who already have been dismissed from the case.

As plaintiff is aware, this case originally was filed in 2002. I dismissed it without prejudice, believing that plaintiff would not be able to prosecute it to completion because of his claimed inability to pay the costs of prosecuting the several other lawsuits he had open at the time. The court of appeals remanded the case, noting that this court could have dismissed plaintiff's complaint for failure to comply with Fed. R. Civ. P. 8, but not out of concern for the strong possibility that plaintiff would run out of money before he could finish what he started. After the remand, but before the court could screen his complaint under 28 U.S.C. § 1915, plaintiff submitted an amended complaint and asked that it be substituted for his original complaint. Because I had not yet screened the original complaint, I granted plaintiff's request. Subsequently, on February 4, 2004, I dismissed plaintiff's amended complaint because it was too lengthy for either the court or the defendants to manage and because plaintiff had ignored the requirement in Rule 8 that his complaint be short and plain. I advised plaintiff that he could have until February 27, 2004, in which to file a new complaint that complied with Rule 8.

Plaintiff filed his second amended complaint on February 17, 2004. In an order

entered on May 27, 2004, I considered the allegations of the complaint carefully and, in a 71-page opinion, determined which of plaintiff's claims could go forward and which lacked legal merit. Still unsatisfied with the breadth of his claims, plaintiff moved for leave to file a third amended complaint on June 9, 2004. This time, he submitted sixteen pieces of paper with proposed changes and asked that they be inserted into his complaint at various places. I denied the motion on June 17, 2004, noting that the amended complaint as contemplated by plaintiff would violate Fed. R. Civ. P. 8. I noted as well that the time had long passed for plaintiff to be looking for ways to tweak his allegations of fact, and that it was time for him to focus on gathering evidence to prove the claims on which he has been allowed to proceed.

Undeterred, plaintiff is asking again for permission to file a third amended complaint. The motion will be denied. As noted above, many of plaintiff's proposed changes are unnecessary because they simply add detail to claims that I have already concluded meet the requirements of Fed. R. Civ. P. 12(b)(6). Other proposed changes are futile because they mirror allegations that I have already concluded do not state a claim upon which relief may be granted. To the extent that plaintiff may have included new allegations that are not meritless, I cannot conclude that justice requires that plaintiff be allowed to amend his complaint.

Even the complaint that I screened pushes the boundaries of what is permissible under Fed. R. Civ. P. 8 to the limit and arguably exceeds it. Rule 15 does not trump Rule

8. At this point, justice does not require that I indulge plaintiff's desire to expand the number of his claims, add new defendants and tinker with the wording in his complaint.

ORDER

IT IS ORDERED that plaintiff's second motion for leave to file a third amended complaint is DENIED.

Entered this 9th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge