

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

FRED ODELL,

Plaintiff,

v.

ORDER

02-C-0691-C

THOMAS BORGAN,

Defendant.

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. On January 6, 2003, I granted plaintiff Fred Odell leave to proceed in forma pauperis on his claim that unknown prison officials at the Fox Lake Correctional Institution were deliberately indifferent to his serious medical needs by (1) denying him prescribed surgery for his heart, prostate and kidney problems and (2) requiring him to re-use his urethral catheter. I allowed plaintiff to proceed against defendant Thomas Borgan, the warden, for the sole purpose of discovering the name of the individuals who are allegedly responsible for denying him his medical treatment and requiring him to re-use his catheters. In that same order, I denied plaintiff leave to proceed on his claims that prison officials violated the

Constitution by (1) confining him in prison and subjecting him to parole; (2) shackling him in handcuffs and leg irons and allowing guards to observe him during medical exams; and (3) allowing prisoners with contagious diseases to serve him food. In addition, I denied plaintiff's request for leave to proceed on behalf of his three daughters.

Presently before the court are plaintiff's "motions for reconsideration and leave to amend complaint," "amendment to motions for reconsideration and leave to amend complaint" and "application for appointment of counsel."

Plaintiff argues in his motion to reconsider and to amend his complaint that although he alleged violations of 42 U.S.C. § 1985, I made no reference to this code provision in the order granting in part and denying in part his request for leave to proceed. Section 1985 pertains to conspiracy to interfere with civil rights. In the claims on which plaintiff has been granted leave to proceed, he has not alleged any conspiracy or discriminatory animus. Rather, plaintiff's conspiracy allegations concern his claim of unconstitutional confinement in prison and parole. As I explained previously, monetary relief for such a claim is barred by Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). If plaintiff seeks relief for the collateral consequences of his conviction, if any, he must do so in a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254.

Second, I denied plaintiff leave to proceed on behalf of his three daughters, two of whom appear to be minors, because plaintiff is not a lawyer (only plaintiff signed the original

complaint). Now, without explanation, plaintiff and his daughters (Veronica, Cleopatra and Libby) have each signed the present motions and accompanying affidavits. Plaintiff's daughters have been denied leave to proceed in this lawsuit. Moreover, they have not suffered any injury that is covered by the claims on which I have granted plaintiff leave to proceed. Because plaintiff's arguments do not convince me that it was error to deny his daughters' leave to proceed, his motion to reconsider and for leave to file an amended complaint will be denied.

Finally, plaintiff has moved for appointment of counsel on the grounds that he is "entitled to relief" and is "without funds or resources with which to engage counsel." However, plaintiff is required to show that he has asked three lawyers to represent him and that these lawyers turned him down. See Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff has failed to make such a showing. Notwithstanding this deficiency, at this early stage of the proceedings, it is unclear whether plaintiff's case will be decided on the merits or, for instance, whether the case will be dismissed on a procedural issue. Plaintiff has submitted a complaint that is clear and complete. I am confident that he can represent himself at least through the first stages of his lawsuit. Accordingly, plaintiff's motion for appointment of counsel will be denied without prejudice to his renewing it at a later date if the case proceeds to a decision on the merits.

ORDER

IT IS ORDERED that

1. Plaintiff Fred Odell's "motions for reconsideration and leave to amend complaint" and "amendment to motions for reconsideration and leave to amend complaint" are DENIED; and

2. Plaintiff's motion for appointment of counsel is DENIED without prejudice.

Entered this 24th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge