

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

MARK LESLIE, MATTHEW BEAUDRY,
KEITH PISCHKE, MARK NEAL, RAMON
RODRIGUEZ, DAVID OAKLEY, TRAVIS
FAIR, STEVE WITTROCK, DUSTIN
MARSHALL, CORY DEMEYER, W. ROBERT
SMITH JR., EUGENE BIRNER, LYNDON
ANDERSON, JEFFERY GARCIA, DENNIS CROPPER,
ALLEN SHECKLES, DANA HOPE, JAMES
BROMELAND, CORY RETZKE, KELSEY
WILLIAMSON, RICKY HOWARD, ANTHONY
ROYAL and CORY WILKINS,

Plaintiffs,

v.

MICHAEL J. SULLIVAN, DOCTOR CRANTS,
and RICK L. HUDSON,

Defendants.

ORDER

00-C-519-C

This is a proposed civil action for monetary, declaratory and injunctive relief brought pursuant to 42 U.S.C. §§ 1983 and 1985. Plaintiffs are presently confined at the North Fork Correctional Facility in Sayre, Oklahoma. Plaintiffs have paid the full fee for filing their complaint. This case was removed to this court from the Circuit Court for Dane County. In

order entered on August 25, 2000, I stayed all proceedings in this case pending a screening under § 1915A and ordered each plaintiff to submit proof of administrative exhaustion by September 11, 2000. Plaintiffs have failed to submit any proof of exhaustion. Instead, plaintiffs have filed a document titled, “Plaintiffs' Opposition to the Defendants' Notice of Removal and This Court's Order of August 24, 2000.” In their motion, plaintiffs contend that this court lacks subject matter jurisdiction and that this case is not subject to the Prison Litigation Reform Act. Because I find that jurisdiction is present under 28 U.S.C. §§ 1331 and 1343 and that plaintiffs are subject to the mandate in 42 U.S.C. § 1997 that no action shall be brought with respect to prison conditions by a prisoner confined in a correctional facility until such administrative remedies as are available are exhausted, plaintiffs' federal law claims will be dismissed for their failure to submit proof that they exhausted their administrative remedies and plaintiffs' state law claims will be remanded.

DISCUSSION

A. Jurisdiction

Plaintiffs contend that this court lacks subject matter jurisdiction because federal courts may not exercise jurisdiction over supplemental state law claims except in “extraordinary circumstances.” Plaintiffs misunderstand the nature of jurisdiction and supplemental

jurisdiction. Because plaintiffs have brought suit pursuant to 42 U.S.C. §§ 1983 and 1985, this court has jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331 and § 1343. See, e.g., 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”) Once a district court has jurisdiction pursuant to §§ 1331 and 1343, the Court of Appeals for the Seventh Circuit has held that “a district court has the discretion to retain or to refuse jurisdiction over state law claims” under 28 U.S.C. § 1367(a). Groce v. Eli Lilly & Co., 193 F.3d 496, 500 (7th Cir. 1999). Because plaintiffs' federal law claims will be dismissed for plaintiffs' failure to exhaust their administrative remedies, I will remand plaintiffs' state law claims to state court.

B. Administrative Exhaustion

Under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a), “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” Section 1997e applies to prisoners in *both* public and private facilities. The term “prison conditions” is defined in 18 U.S.C. § 3626(g)(2), which provides that “the term 'civil action with respect to prison conditions' means any civil proceeding arising under Federal law with respect to the conditions of confinement or

the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.” The Court of Appeals for the Seventh Circuit has held that “a suit filed by a prisoner before administrative remedies have been exhausted must be dismissed; the district court lacks discretion to resolve the claim on the merits.” Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532, 535 (7th Cir. 1999); see also Massey v. Helman, 196 F.3d 727 (7th Cir. 1999).

Plaintiffs have failed to submit any proof that they exhausted their administrative remedies on any of the claims in their complaint. In the August 25, 2000 order, plaintiffs were warned that their complaint would be dismissed if they failed to submit the requisite proof of exhaustion by September 11, 2000. Because they have failed to do so, their federal law claims under the First, Eighth and Fourteenth Amendments (counts II, V, VII, X, XI and XII) will be dismissed pursuant to § 1997e(a) and their state law claims (counts I, III, IV, VI, VIII and IX) will be remanded to state court.

ORDER

IT IS ORDERED that

1. Plaintiffs' federal law claims (counts II, V, VII, X, XI and XII) are DISMISSED

pursuant to 42 U.S.C. § 1997e(a) for their failure to exhaust their administrative remedies; and

2. Plaintiffs' state law claims (counts I, III, IV, VI, VIII and IX) are REMANDED to Dane County Circuit Court.

Entered this 25th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge