

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

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HARRISON FRANKLIN,

Plaintiff,

v.

GARY R. McCAUGHTRY, Warden of
Waupun Correctional Institution, PAULINE
BELGGADO, Doctor of Waupun
Correctional Inst., HSU, BETH DITHMANN,
SGT. SIEDOSCHLAG and JIM WEGNER,

Defendants.

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ORDER

00-C-157-C

In an order entered November 17, 2000, I allowed plaintiff Harrison Franklin to amend his complaint and granted him leave to proceed in forma pauperis against defendants Gary R. McCaughtry, Pauline Belggado, Beth Dithmann, Sgt. Siedoschlag and a new defendant, Jim Wegner, on his claim that he received inadequate medical care in violation of the Eighth Amendment. I dismissed defendants John Doe nurse and Jane Doe nurse, against whom plaintiff originally had been allowed to proceed, because plaintiff failed to discover their names before the deadline for amending his complaint had passed.

Now plaintiff has filed various additional papers with the court. He asks that this court reconsider its dismissal of defendants John Doe and Jane Doe, appoint counsel to represent him in this case, grant him an extension of time to disclose his expert witnesses, delay a decision on defendants' motion to dismiss and provide him with a copy of his amended complaint. Plaintiff requests also that a copy of the amended complaint be made for service upon defendant Jim Wegner. Finally, plaintiff has filed a brief and exhibits in opposition to defendants' motion to dismiss.

A. Motion for Reconsideration

Because nothing in petitioner's motion for reconsideration convinces me that I made legal errors in dismissing John and Jane Doe from this case, that motion will be denied.

B. Motion for Appointment of Counsel

Although plaintiff indicates that he has made a reasonable effort to retain counsel, he also has demonstrated he is able to represent himself in this matter. For example, plaintiff has submitted coherent and reasoned briefs on the merits of his motion for appointment of counsel and in response to defendants' motion to dismiss. Although it may be more difficult for plaintiff to conduct discovery in this case than it would be for a lawyer, I do not foresee unreasonable

difficulties for plaintiff in working with defendants to discover the information he needs. Therefore, plaintiff's motion for the appointment of counsel will be denied.

C. Copies of Amended Complaint

A copy of plaintiff's amended complaint is enclosed to plaintiff with this order. However, plaintiff will have to pay for the copy. He is to send a check to the Clerk of Court in the amount of \$1.20 (12 pages copied at 10 cents a page) as soon as he is able to do so. Plaintiff is reminded that he is to keep for his own records a copy of every paper he files with the court. Plaintiff's amended complaint, along with the November 17, 2000 and June 9, 2000 orders, already has been submitted to the U.S. Marshal for service on defendant Jim Wegner. There is no need to send plaintiff a second copy for this purpose.

D. Defendants' Motion to Dismiss

Defendants have filed a motion to dismiss the original complaint. That motion appears to have crossed in the mail with the November 17, 2000 order allowing plaintiff to amend his complaint. In the November 17 order, I stated that defendants McCaughtry, Belggado, Dithmann and Siedoschlag would have until the date on which defendant Wegner's answer to the complaint is due in which to file their response to the amended complaint. Defendants now

have two options: they may advise the court that they wish to stand on their motion to dismiss as responsive to the amended complaint or they may file a new response within the time allowed in the November 17 order. If defendants choose to stand on their motion to dismiss, the court will consider plaintiff's brief and exhibits as his response to the motion to dismiss. Defendants will have ten days from the date they notify the court of their desire to stand on their motion to dismiss, if they do, in which to file a reply brief.

Plaintiff's request that the court defer a decision on defendants' motion to dismiss will be denied as moot.

E. Disclosure of Expert Witnesses

A decision on plaintiff's motion to extend the deadline for disclosing experts will be stayed until after decision on a motion to dismiss. (This assumes that defendants will move to dismiss the amended complaint.)

ORDER

IT IS ORDERED that

1. Plaintiff Harrison Franklin's motion for reconsideration of the dismissal of John and Jane Doe from this case is DENIED;

2. Plaintiff's motion for the appointment of counsel is DENIED;

3. A decision on plaintiff's motion for an extension of time in which to disclose expert witnesses is STAYED;

4. Plaintiff's motion to defer a decision on defendants' motion to dismiss is DENIED as moot.

Entered this 11th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge