

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

In an order entered on September 27, 2000, I dismissed plaintiffs' federal law claims (counts II, V, VII, X, XI and XII) pursuant to 42 U.S.C. § 1997e(a) for their failure to exhaust their administrative remedies and remanded plaintiffs' state law claims (counts I, III, IV, VI, VIII and IX) to Dane County Circuit Court. Plaintiffs have filed a motion for reconsideration

of the judgment dismissing their case, which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. After reviewing the motion, I conclude that plaintiffs are correct and that the September 27, 2000 order must be vacated.

I dismissed plaintiffs' federal claims for plaintiffs' failure to exhaust their administrative remedies. It was an error to do so. Although it may well be that plaintiffs' suit will have to be dismissed on that same ground eventually, plaintiffs are entitled to proceed with their case and leave it to defendants to allege lack of exhaustion as an affirmative defense, if defendants can prove that plaintiffs have not exhausted the remedies available to them. Because plaintiffs are prisoners, I must screen their complaint and dismiss any claim that is "frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief." 42 U.S.C. § 1997e(c)

Because plaintiffs' federal claims should not have been dismissed at this stage, their state law claims remain viable.

ORDER

IT IS ORDERED that the order and the judgment entered herein on September 27, 2000, are VACATED in all respects. The clerk of court is directed to arrange for the return

of the file from the Circuit Court for Dane County.

Entered this 19th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge