

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

JEFFREY JON BONNIN,

Plaintiff,

v.

EAU CLAIRE COUNTY, EAU CLAIRE COUNTY
SHERIFF, EAU CLAIRE COUNTY JAIL
CAPTAIN (LEIBERG),

Defendants,

ORDER

03-C-65-C

Plaintiff has been granted leave to proceed in forma pauperis in this action on claims that 1) unnamed “jailers,” “officers” and “sheriff’s deputies” used excessive force against him when they beat him and used pepper spray continually without good cause; 2) several “sheriff’s deputies” and “jail officers” denied him prescribed medication and refused him medical attention for serious medical needs after he was beaten; and 3) “jail officials” denied him food and water for a period of more than 24 hours in violation of his Eighth Amendment rights. I allowed plaintiff to proceed against defendant “Eau Claire County Sheriff” despite plaintiff’s failure to allege any wrongful acts on the part of the sheriff, for the sole purpose of allowing plaintiff to conduct discovery to learn the names of the

unknown “jailers,” “officers” and “sheriff’s deputies” so that he could amend the complaint to identify who had committed what acts and so that he could serve his amended complaint on the individuals who had allegedly caused him harm. In addition, I allowed plaintiff to proceed on these claims against defendant “Eau Claire County Jail Captain (Leiberg),” and defendant Eau Claire County, despite plaintiff’s failure to describe how these defendants were personally involved in depriving plaintiff of his constitutional rights. Nevertheless, I noted that under the liberal pleading standards required for pro se pleadings, it was possible that plaintiff could amend his complaint to allege facts to show how Captain Leiberg was personally involved in the alleged wrongdoing (for example, I considered it possible that one of plaintiff’s broadly identified “jailers,” “officers” or “sheriff’s deputies” could be Captain Leiberg). It was remotely possible, also, that plaintiff could amend his complaint to allege that the county had a policy or practice on which the individual unnamed defendants had acted when they allegedly violated plaintiff’s constitutional rights.

Subsequently, in a preliminary pretrial conference order entered on May 29, 2003, Magistrate Judge Stephen Crocker asked defendants to identify no later than June 13, 2003, all the “John Doe” defendants fitting the description provided in plaintiff’s discovery request. Plaintiff was given until July 11, 2003, in which to amend his complaint by hand-writing changes in the body of the complaint replacing all references to generically described jail or county officials with the names provided to him by the county and to change the caption of

the complaint to list the new defendants.

Instead of filing an amended complaint, plaintiff has submitted a single sheet of paper stating,

I respectfully request to add to the complaint the following names as the new defendants. I also request to remove Captain Leiberg since he no longer is in charge of the jail. The added defendants are:

1. William R. Boelke
2. Kevin J. Otto
3. Jonathan J. Pendergast
4. Michael P. Mayer
5. Sheila A. Blanes

I also request Sheriff Cramer remain as one of the defendants since he is the overall person in charge of these defendants.

This submission does not satisfy plaintiff's obligation to amend his complaint to identify the defendants and connect each one of them to one or more of the acts forming the basis for the claims on which plaintiff is proceeding. It is impossible for the court or defendants to know who is alleged to have beaten plaintiff and sprayed him with pepper spray, who is alleged to have denied him medication, who is alleged to have denied his requests for medical attention for his alleged serious medical needs following the use of force, and who is alleged to have denied him food and water for more than 24 hours. Therefore, I will give plaintiff one more opportunity to amend his complaint to comply with the magistrate judge's order.

Enclosed with this order to plaintiff is a copy of his complaint. In each instance where plaintiff refers to a “jail officer,” “sheriff’s deputy” “jailer” or “officer,” he is to replace the reference by writing in the name of the appropriate individual.

Defendant Captain Leiberg will be dismissed from this action. Plaintiff appears to concede that he was not personally involved in committing any of the alleged unconstitutional acts on which he has been allowed to proceed. In addition, I will dismiss defendant Eau Claire County Sheriff. Now that plaintiff has learned the identities of the unnamed “jailers,” “officers” and “sheriff’s deputies,” there is no reason to keep the sheriff in the suit. Plaintiff admits that the only reason he wants the sheriff to be a defendant is because he is the “overall person in charge” of the other defendants. As I explained to plaintiff in the order granting him leave to proceed on his claims, the law under which plaintiff is proceeding does not recognize claims against persons who are not directly involved in the complained of acts. Direct involvement includes directing a person to commit a wrongful act or watching the wrongdoing while it occurs and refusing to intervene, but it does not include simply being a supervisor of other persons who acted impermissibly.

ORDER

IT IS ORDERED that plaintiff may have until August 18, 2003, in which to serve and file an amended complaint in which he replaces the names of all unknown defendants

with the names of persons he has identified through discovery. If, by August 18, 2003, plaintiff fails to serve and file an amended complaint, plaintiff's case may be dismissed for lack of prosecution.

Further, IT IS ORDERED that defendants Eau Claire County Sheriff and Eau Claire County Jail Captain Leiberg are DISMISSED from this action for plaintiff's failure to allege their personal involvement in any constitutional wrongdoing.

Entered this 5th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge