

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

TITUS HENDERSON,

Plaintiff,

v.

DAVID BELFUEIL and
KAREN LALONE,

Defendants.

ORDER

03-C-729-C

Plaintiff Titus Henderson has moved for reconsideration of the order entered March 29, 2005, denying him leave to file an amended complaint. The case has already been pending for more than one year, two motions for summary judgment have been decided and a third is being briefed. Most of plaintiff's claims and original defendants have been dismissed. In addition, I have already explained to plaintiff that allowing the amendment would likely be futile because the proposed amended complaint appears to reallege the same claims that plaintiff made in his original complaint. After granting plaintiff leave to proceed on these claims, he failed to adduce evidence to support them on summary judgment. Therefore, the doctrine of claim preclusion bars plaintiff from relitigating these claims in this

or any other case.

In his motion for reconsideration, plaintiff argues that he delayed in filing his amended complaint only three months, not more than a year, because he was on medication that hindered his mental abilities. Plaintiff's voluminous filings both in this case and in another federal case he has been pursuing contemporaneously show otherwise. Plaintiff filed his complaint in this case, a motion for appointment of counsel and a supporting affidavit in December 2003. In May 2004, plaintiff submitted a second motion for appointment of counsel, a supporting affidavit and a brief in opposition to a motion to dismiss; in June, he submitted an amended complaint; in July, he filed a motion for leave to amend, an amended complaint, two motions to compel discovery and one supporting brief; in August, plaintiff filed a motion for reconsideration and a motion to file an amended complaint; in September, he filed a third motion for appointment of counsel; in October, plaintiff filed a brief in opposition to defendants' motion for summary judgment, responses to defendants' proposed findings of fact and an affidavit; and in December, he filed a brief in response to another motion for summary judgment, responses to proposed findings of fact and an affidavit. In February 2005, plaintiff filed a brief in opposition to a third motion for summary judgment, a third set of responses to proposed findings of fact and another affidavit.

Plaintiff filed his original complaint in Henderson v. Berge, 04-C-39-C in February 2004. In April 2004, plaintiff filed a motion for a temporary restraining order, a brief in

support, a motion for leave to file an amended complaint, a motion for appointment of counsel and two affidavits; in June, he filed a brief in opposition to a motion to dismiss, a request for admissions and a request for production of documents; in September, he moved for certification to take an interlocutory appeal; and in December, plaintiff filed a motion for extension of time. In January 2005, plaintiff filed a brief in opposition to a motion for summary judgment, responses to defendants' proposed findings of fact, an affidavit and a motion to strike and in February, he submitted an affidavit at the court's request.

Plaintiff notes that in Henderson v. Berge, 04-C-39-C, he submitted a statement about his inability to concentrate because of medication he was taking. I assume plaintiff is referring to his December 2004 motion for an extension of time in which he informed the court that he was being treated for the bacteria *Helicobacter-pylori* with medication that caused him pain when he sat upright. In a third lawsuit plaintiff recently filed, Henderson v. Huibregtse, 05-C-157-C, plaintiff alleges that he began taking an antibiotic for this bacteria in September 2004. Even if I were to accept as true plaintiff's statement that this medication was impairing his mental abilities, he did not start taking it until nine months after he filed his original complaint. In addition, as I have just outlined, plaintiff made numerous filings, including submissions opposing three separate motions for summary judgment, between September 2004 and March 2005 when he filed his amended complaint. There is no plausible reason why plaintiff could not have filed an amended complaint if he

were competent enough to file these varied motions, briefs and affidavits.

Accordingly, plaintiff's motion for reconsideration of the March 29, 2005 order denying him leave to amend is DENIED.

Entered this 28th day of April, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge