IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

ORDER

Plaintiff,

03-C-729-C

v.

DAVID BELFUEIL and
KAREN LALONE,

Defendants.

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Over one year ago, I granted plaintiff leave to proceed on three unremarkable claims: (1) that defendants David Belfueil, Jeffrey Endicott, Suzanne Dehaan, Scott Eckstein, David Tarr, Judy Chojanski and Eric Dahlstrom violated plaintiff's Eighth Amendment rights by inserting a needle into his arm; (2) that defendant Belfueil subjected him to an unreasonable search and seizure in violation of his rights under the Fourth Amendment by taking a sample of his blood; and (3) defendants Tarr, Endicott, Dehaan, Jannelle Paske, Sandra Hautumaki and Cindy O'Donnell retaliated against petitioner for filing an inmate complaint about the blood test by prolonging his stay in segregation. Now, after two motions for summary judgment have been decided that disposed of most of his claims, plaintiff has filed a motion

to file an amended complaint. Fed. R. Civ. P. 15(a) (amendment may be made once as a matter of course before responsive pleading is served and otherwise is permitted only with written consent of adverse party or leave of court).

The Court of Appeals for the Seventh Circuit has enumerated several conditions that justify denying a motion to amend: undue delay; dilatory motive on the part of the movant; repeated failure to cure previous deficiencies; and futility of the amendment, Cognitest Corporation v. Riverside Publishing Company, 107 F.3d 493, 499 (7th Cir. 1997), as well as undue prejudice to the opposing party. Samuels v. Wilder, 871 F.2d 1346, 1351 (7th Cir. 1989). Plaintiff's motion to amend will be denied for undue delay.

I have decided two motions for summary judgment in this case and the parties are briefing a third. The complaint has been dismissed as to defendants Endicott, DeHaan, Eckstein, Paske, Tarr, Hautamaki, O'Donnell, Dehn and Ruhland and I granted defendant Belfueil summary judgment on plaintiff's Eighth Amendment claim. Although Rule 15(a) provides that leave to amend shall be "freely given when justice so requires," the Court of Appeals for the Seventh Circuit has recognized that "'justice may require something less in post-judgment situations than in pre-judgment situations.'" Diersen v. Chicago Car Exchange, 110 F.3d 481, 489 (7th Cir. 1997) (quoting Twohy v. First National Bank of Chicago, 758 F.2d 1185, 1196 (7th Cir. 1985)).

In large measure, the allegations plaintiff makes in his proposed amended complaint

repeat those he made in his original complaint. Although I granted plaintiff leave to proceed, he failed to adduce evidence to support most of these allegations on summary judgment. Plaintiff has not challenged the finding regarding his failure to submit proof of the claims he made. An amended complaint is not an appropriate mechanism for obtaining a second bite at the apple. To the extent that there are allegations in the amended complaint that were not included in the original complaint, plaintiff does not explain why he waited over one year to raise them.

ORDER

IT IS ORDERED that plaintiff Titus Henderson's motion to file an amended complaint is DENIED.

Entered this 29th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge