

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

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TITUS HENDERSON,

Plaintiff,

v.

DAVID BELFUEL, in his individual and official capacity, JEFFREY ENDICOTT, in his individual and official capacity, SUZANNE DEHAAN, in her individual and official capacity, SCOTT ECKSTEIN, in his individual capacity, JANELLE PASKE, in her individual capacity, DAVID TARR, in his individual capacity, SANDRA HAUTUMAKI, in her individual capacity, CINDY O'DONNELL, in her official capacity, and JOHN DOES,

Defendants.

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ORDER

03-C-729-C

Plaintiff Titus Henderson has submitted a proposed amended complaint in which he identifies Herb Dehn, Paul Ruhland and Judy Chojnaski as the Doe defendants he referred to in his original complaint. In compliance with the magistrate judge's May 27, 2004 preliminary pretrial conference order, plaintiff has prepared a proposed amended complaint that is identical to the original complaint, except that plaintiff has added the names of Herb Dehn, Paul Ruhland and Judy Chojnaski to the caption of the complaint and has substituted

their names in the body of the complaint where he formerly referred to “Doe defendants.” However, plaintiff made two additional changes to his proposed amended complaint that ignore the magistrate judge’s directive in the May 27, 2004 order that plaintiff was not to make any other changes to his complaint without receiving permission from the court.

First, plaintiff adds paragraph 35(A), in which he alleges that “Defendant Tarr has continued to conspire with Redgranite staff, Autum Snyder (Schneider) to continue retaliation against plaintiff.” (Plaintiff also attached to the amended complaint an “Exhibit A” and two inmate complaints apparently relating to this claim.) Plaintiff has not named Autum Snyder (Schneider) as a proposed defendant. Even if he had, his bald allegation that she and defendant Tarr are conspiring to continue to retaliate against plaintiff is simply too vague to put any defendant on notice of the acts that serve as the basis for a continuing retaliation or conspiracy claim. Therefore, the claim will be dismissed. Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002).

Second, plaintiff has included as a defendant in the caption of the proposed amended complaint the “Township of Redgranite Village.” In paragraph 36 of the proposed amended complaint, plaintiff alleges: “Plaintiff filed complaint by letter of forcible DNA extraction by defendant Belfueil to Redgranite Police Dept. Chief Ronald Masticola but has not received a response. Oct. 20, 02; turned a blind eye.” In paragraph 43 of the proposed complaint, plaintiff summarizes his claim against the proposed defendant Village:

The failure of defendant Village of Redgranite to adequately train its employees in how to perform a search and seizure warrant inside prisons, and preventing customs of unconstitutional patterns of conduct, constituted deliberate indifference by not providing further technical and procedural training, and contributed to and caused the violation of the Fourth Amendment of the United States Constitution.

Like plaintiff's new conspiracy and continuing retaliation claim, this new claim against a new defendant will be dismissed.

To find a municipality liable under § 1983 for failure to train its law enforcement officers properly, there must have been "deliberate indifference" toward the rights of individuals with whom officers came into contact. City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989). Further, the Supreme Court has required that plaintiff identify a "policy" or "custom" that caused his injury. Board of the County Commissioners v. Brown, 520 U.S. 397, 403 (1997) (citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978); Pembaur v. Cincinnati, 475 U.S. 469, 480-81 (1986); City of Canton, 489 U.S. at 389). "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality - - - a 'policy' as defined by our prior cases - - - can a city be liable for such a failure under § 1983." City of Canton, 489 U.S. at 389.

Plaintiff does not allege that defendant Belfueil was following a Village policy or custom regarding the taking of DNA samples when he took a DNA sample from plaintiff on October 1, 2002 without first obtaining a warrant. He alleges only that he wrote to the

Redgranite police chief on October 20, 2002, nineteen days after the incident, and that he did not get a response from the police chief. This allegation falls far short of establishing a claim against the proposed defendant Village.

One final matter needs to be addressed. Plaintiff has identified Herb Dehn and Paul Ruhland as correctional officers at the Redgranite Correctional Institution. Because these new defendants are state corrections employees, the court will forward copies of plaintiff's proposed amended complaint to the office of the Attorney General and request that the Attorney General accept service of process on behalf of these defendants under the informal service agreement between the Attorney General and this court. However, plaintiff has identified defendant Judy Chojnaski as a nurse at the Redgranite facility who is employed by a private entity, Prison Health Services. As to this defendant, the court will forward a copy of plaintiff's complaint to the United States Marshal for service of process. It will be up to the marshal to undertake reasonable efforts to locate defendant Chojnaski. If she no longer works at the Redgranite institution, the marshal will have to contact the private employer or conduct a public records search on the Internet in an attempt to learn her address.

ORDER

IT IS ORDERED that

1. Plaintiff's proposed amended complaint is accepted for filing, but his proposed new claims of conspiracy and continuing retaliation against defendant Tarr and failure to train against the Township of Redgranite Village are DISMISSED.

2. Defendants Belfueil, Endicott, Dehaan, Eckstein, Tarr, Paske, Hautamaki and O'Donnell may file a response to the amended complaint at the same time that defendants Herb Dehn, Paul Ruhland file their responsive pleading. Alternatively, the former defendants may elect in response to the amended complaint to stand on their response to the original complaint.

3. Copies of plaintiff's complaint are being forwarded to the Attorney General for acceptance of service of process on behalf of defendants Herb Dehn and Paul Ruhland and to the United States Marshal for service on defendant Judy Chojnaski.

Entered this 28th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge