

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

-----  
JONATHAN P. COLE,

Plaintiff,

v.

JON E. LITSCHER;  
MICHAEL CATALANO;  
PRISON HEALTH SERVICES, INC.;  
PAM BARTELS;  
JOHN DOES 1, 34, 35, 36, 37, 39, 82, 84, A, D and E;  
and GERALD A. BERGE,

Defendants.  
-----

ORDER

04-C-116-C

In an order entered in this case in the District Court for the Eastern District of Wisconsin on February 26, 2004, Judge Lynn Adelman dismissed defendants Doe 2-33, 38, 40-81, 83, 85-94, B-C and F-P from this action, and gave plaintiff until March 26, 2004, in which to name John Does 1, 34-37, 39, 82, 84, A, D and E. In addition, he granted the motion of defendant Berge to transfer venue of the case to this district, and denied the motion of defendants Bartels, Catalano and Prison Health Services, Inc. to dismiss the case for improper venue.

Presently before the court is plaintiff's response to Judge Adelman's February 26 order, as well as his "Motion for Reconsideration" dated March 5, 2004, in which he asks for reconsideration of that part of Judge Adelman's order that dismissed defendants Doe 2-33, 38, 40-81, 83, 85-94, B-C and F-P.

Turning first to the Doe defendants plaintiff has identified, plaintiff states that John Doe #1 is John W. Kusmaul, defendant Doe #34 is D. Esser, Defendant Doe #35 is Fuerstenburg, defendant Doe #37 is D. Blackbourn, defendant Doe #82 is Jantzen, defendant Doe #84 is Tim F. Haines, defendant Doe A is Shirley Olson, defendant Doe D is Kerry Melby and defendant Doe E is Becky Manning. Plaintiff states that he still does not know the names of the defendants he identified in the amended complaint as Does ## 36 and 39.

As for the Doe defendants that plaintiff still cannot name, I note that plaintiff was allowed to proceed against defendant Doe #39 on a claim that this defendant opened legal mail outside plaintiff's presence. Because plaintiff Cole has been unable to discover the name of this Doe defendant despite the nearly two year period of time in which he could have conducted discovery to learn the name, I will dismiss plaintiff's claim against defendant Doe #39.

As for Doe defendant #36, there was only claim raised against him and Doe #37, who plaintiff now identifies as D. Blackbourn, on which Judge Adelman allow the case to

proceed. That claim is a claim raised by former co-plaintiff Luis Nieves concerning denial of a rosary. Judge Adelman did not allow plaintiff Cole to proceed on any claim against Does ## 36 and 37. Because plaintiff Cole has not been allowed to proceed on any claim against these defendants, they will be dismissed from this lawsuit.

Under separate cover, this court will send copies of plaintiff's complaint to the Attorney General's office for informal service of process on defendants D. Esser, Fuerstenburg and Jantzen. Otherwise, plaintiff has made clear that on March 3, 2004, he sent defendants Shirley Olson, Kerry Melby and Becky Manning, employees of Prison Health Services, Inc., copies of the amended complaint and requests for waiver of service of a summons. He states also that he served defendants John W. Kussmaul and Tim F. Haines with his complaint and a request for waiver of service of a summons.

As for plaintiff's "Motion for Reconsideration" of Judge Adelman's decision to dismiss defendants Doe 2-33, 38, 40-81, 83, 85-94, B-C and F-P, the motion will be denied. Although plaintiff wants these defendants reinstated, he still has not identified who they are. As I noted above, this case was filed nearly two years ago. Plaintiff has had ample time to identify the Doe defendants related to his claims. Because he has not done so, I will not disturb Judge Adelman's order of dismissal.

Finally, I note that defendant Berge filed an answer to plaintiff's amended complaint on May 20, 2003, and that defendant Litscher requested and was granted an enlargement

of time to May 10, 2004, in which to file his answer. However, there is nothing in the record to show that defendants Bartels, Catalano and Prison Health Services, Inc. have filed an answer to the amended complaint. Therefore, these defendants will be given an enlargement of time to May 10, 2004, in which to file their answer. As soon as all the defendants, former and new, have filed their responsive pleadings to the amended complaint, this case will be set for a preliminary pretrial conference before United States Magistrate Judge Stephen Crocker so that deadlines can be set to move this case to resolution.

#### ORDER

IT IS ORDERED that

1. Plaintiff's claim that defendant Doe #39 opened legal mail outside his presence is DISMISSED and defendant Doe #39 is DISMISSED from this action.
2. Defendant Doe #36 and D. Blackburn are DISMISSED from this action because plaintiff has not been allowed to proceed on any claim against these defendants.
3. The caption and the text of plaintiff's amended complaint (the operative pleading in this action) are AMENDED to substitute John W. Kussmaul in place of defendant Doe #1, D. Esser in place of defendant Doe #34, Fuerstenburg in place of defendant Doe #35, Jantzen in place of defendant Doe #82, Tim F. Haines in place of Doe #84, Shirley Olson

in place of defendant Doe A, Kerry Melby in place of defendant Doe D and Becky Manning in place of defendant Doe E.

4. Plaintiff's motion for reconsideration of the portion of Judge Adelman's February 26, 2004 order that dismissed Does 2-33, 38, 40-81, 83, 85-94, B-C and F-P is DENIED.

5. Defendants Bartels, Catalano and Prison Health Services, Inc., may have until May 10, 2004, in which to file an answer to plaintiff's amended complaint.

Entered this 21st day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge