

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

EDWIN C. WEST,

Plaintiff,

v.

STEVE HAMILTON, AMY WYTTENBACH,
DENNIS SNYDER and DARLENE
HEIMERMANN-RAMSEY,

Defendants.

ORDER

04-C-211-C

Plaintiff Edwin West, a patient at the Sand Ridge Secure Treatment Center, is proceeding pro se in this case on his claim that defendants are treating him differently from similarly situated patients in violation of his Fourteenth Amendment right to equal protection under the law. Because plaintiff is in custody as a result of an involuntary commitment and not a criminal sentence, the 1996 Prison Litigation Reform Act does not apply to this case.

Presently before the court is plaintiff's motion to amend his complaint. According to plaintiff, the purpose of the amendment is to voluntarily dismiss defendant Dennis Snyder and to "remove paragraphs to simplify the case to the single issue of equal protection."

Plaintiff's motion to amend will be denied as unnecessary. First, plaintiff can voluntarily dismiss his claims against defendant Dennis Snyder without amending his complaint to reflect that Snyder is no longer a defendant. This can be accomplished by construing his motion to amend to include a notice of voluntary dismissal of Dennis Snyder pursuant to Fed. R. Civ. P. 41. The remaining changes plaintiff wants to make to the complaint accomplish nothing more than tinkering with the allegations. Plaintiff concedes that he is making no substantive changes to the allegations supporting the equal protection claim on which he already is proceeding. Therefore, it would simply delay the proceedings in this case to permit the amendment.

With respect to plaintiff's notice of voluntary dismissal of Dennis Snyder, I note that if the notice had been filed before the defendants answered plaintiff's complaint, the dismissal would be entered on the record without prejudice to plaintiff's filing the same claim against the dismissed defendant at some future time. In this case, however, the motion was filed after the defendants filed their answer. Therefore, Rule 41(a)(2) provides that the dismissal may be had "only upon order of the court and upon such terms and conditions as the court deems proper." Although defendant Snyder has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal of defendant Snyder without prejudice if defendant agrees to such a dismissal.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED as unnecessary.

Further, IT IS ORDERED that plaintiff's motion to amend is construed to include a notice of voluntary dismissal of defendant Dennis Snyder. If, by August 31, 2004, defendant Snyder advises the court that he does not object to a dismissal without prejudice, then I will grant plaintiff's request to dismiss defendant Snyder voluntarily and the dismissal will be without prejudice.

Entered this 19th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge