

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

GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY
TODD JOHNSON,

Defendant.

ORDER

04-C-661-C

In an order entered in this case on November 10, 2004, I granted plaintiff Gary B. Campbell leave to proceed against defendant Todd Johnson on his claim that on March 31, 2004, Johnson applied excessive force to plaintiff. Defendant answered the complaint on December 6, 2004. On December 29, 2004, the magistrate judge held a preliminary pretrial conference to schedule the deadlines necessary to move this case to resolution. In an order dated that same day, the magistrate judge confirmed those dates in writing. One of the deadlines established by the magistrate was a deadline for plaintiff to amend his complaint to name an unnamed deputy referenced in plaintiff's complaint.

Now before the court is plaintiff's proposed amended complaint, which I construe to

include a motion for leave to amend. In addition, defendant's counsel has written to request that the preliminary pretrial conference order be amended to remove the deadline established for plaintiff to amend his complaint to name an unknown deputy. Plaintiff's motion will be denied and defendant's motion will be granted.

In support of his motion, defendant points out that this court did not grant plaintiff leave to proceed in forma pauperis against an unknown deputy. Indeed, in my screening order dated November 9, 2004, I expressly denied plaintiff's request for leave to proceed against an unknown deputy on the ground that plaintiff failed to allege any facts suggesting that the unknown deputy was involved personally in violating his constitutional rights. Plaintiff's proposed amended complaint provides the name of the unknown deputy. However, none of plaintiff's new allegations implicates that deputy in the acts which I found stated a claim of excessive force against defendant Johnson.

Plaintiff also appears to be seeking to amend his complaint to add "an official capacity claim" against defendant Johnson. A claim against a public officer in his official capacity is a claim against the entity for which he is an agent. Richman v. Sheahan, 270 F.3d 430, 439 (7th Cir. 2001). To hold Wood County liable under § 1983, plaintiff would have to allege facts from which an inference could be drawn that a policy or custom of the county was a "moving force" of the excessive force defendant is alleged to have used. White v. City of Markham, 310 F.3d 989, 998 (7th Cir. 2002). Plaintiff makes no such allegations.

ORDER

IT IS ORDERED that

1) Defendant's request for modification of the December 29, 2004, preliminary pretrial conference order is GRANTED; and

2) The preliminary pretrial conference order entered on December 29, 2004, is AMENDED to delete the paragraph numbered 2 on page 4 of the order. In all other respects, the order remains as entered;

3) Plaintiff's motion to amend his complaint is DENIED.

Entered this 13th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge