

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

LUIS A. RAMIREZ,

Plaintiff,

v.

ANTHONY MELI, MARC CLEMENTS,
TOD RUSSEL, STEVEN SCHUELER,
CURT JANSSEN, BRET MIERZEJEWSKI,
MICHAEL GLAMANN and BRIAN PASSIG,

Defendants.

ORDER

04-C-0786-C

In an order entered in this case on April 27, 2005, I stayed briefing on defendants' motion for summary judgment pending a ruling on defendants' motion to dismiss three of plaintiff's claims for his failure to exhaust his administrative remedies. Those claims were that (1) defendants Tod Russel, Bret Mierzejewski, Michael Glamann and Brian Passig used excessive force during his January 15, 2002 cell extraction in violation of the Eighth Amendment; (2) defendant Anthony Meli violated his Eighth Amendment rights by failing to prevent the members of the extraction team from using excessive force on him; and (3) defendants Meli and Steven Schueler subjected him to cruel and unusual punishment in

violation of the Eighth Amendment by holding him in an extremely cold cell without clothes. In ordering the stay, I stated, incorrectly, that there was a fourth live claim in the lawsuit: that defendants Schueler, Meli, Russel, Mierzejewski, Glamann and Passig were deliberately indifferent to plaintiff's serious medical needs after the cell extraction.

On April 29, 2005, before they received the court's May 2, 2005 order dismissing three of plaintiff's claims for his failure to exhaust his administrative remedies, defendants filed a "Motion to Dismiss or Alternatively for Summary Judgment," seeking resolution of the three claims that were dismissed on May 2, 2005. Now, in reviewing the file, I have discovered that in fact, on November 15, 2004, I denied plaintiff leave to proceed in forma pauperis on his claim that defendants were deliberately indifferent to his serious medical needs in violation of his Eighth Amendment rights. Therefore, there are no claims remaining to be decided in this lawsuit.

ORDER

IT IS ORDERED that defendants' "Motion to Dismiss or Alternatively for Summary Judgment" is DENIED as unnecessary.

Further, IT IS ORDERED that this action is DISMISSED. The clerk of court is requested to enter judgment DISMISSING the action without prejudice for plaintiff's failure

to exhaust his administrative remedies.

Entered this 3rd day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge