

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

REGGIE TOWNSEND,

Plaintiff,

v.

(Security Director) LARRY FUCHS;
(Doctor) HEINZL, Physician,

Defendants.

ORDER

05-C-204-C

Plaintiff Reggie Townsend is proceeding in this action on his claims that defendant Heinzl deliberately prescribed medication for him that would cause him to bleed internally and experience pain in his stomach, liver and kidneys and defendant Fuchs forced him to sleep on a floor that was wet for most of the sixty-three days plaintiff spent in temporary lock-up. Now plaintiff has filed a document titled "Motion to Correct Dr. Heinzl to Give Me Medical Treatment , And Am Bleeding Again Internally, I Refused to Take Any More Meds," which I construe as a motion for a preliminary injunction directing defendant Heinzl to provide plaintiff with different medical treatment. In addition, plaintiff has filed a document titled "Motion to Correct the Record and Supplement," which I construe as a

motion for reconsideration of this court's order of May 18, 2005, granting in part and denying in part plaintiff's request for leave to proceed in forma pauperis in this action.

Plaintiff's motion for a preliminary injunction will be denied. First, it does not appear that plaintiff sent a copy of his motion to counsel for the defendants as he is required to do pursuant to Fed. R. Civ. P. 5. I have twice before told plaintiff about his obligation to serve defendants' counsel with his submissions and explained that the court will not consider documents that do not show that they have been served on opposing counsel.

Second, even if I could consider plaintiff's motion, I would have to deny it. In determining whether a plaintiff is entitled to preliminary injunctive relief,

A district court must consider four factors . . . These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, a plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then moves on to balance the relative harms and public interest, considering all four factors under a "sliding scale" approach. See In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

Plaintiff has provided no evidence to demonstrate a likelihood of success on the merits of his claim. He has not put in any evidence to prove that defendant Heinzl is being deliberately indifferent to his serious medical needs. Rather, it appears from plaintiff's motion that Dr. Heinzl recently saw plaintiff to evaluate his bleeding problem. From the way plaintiff has titled his motion, it appears also that plaintiff refuses to accept the treatment that Dr. Heinzl recommends. Plaintiff asks that the court order that he be sent to a hospital for an evaluation of his condition. Unfortunately for plaintiff, a difference of opinion about the type of medical care he is receiving falls far short of proving deliberate indifference. Abdul-Wadood v. Nathan, 91 F.3d 1023, 1025 (7th Cir. 1996). Therefore, plaintiff has not shown a likelihood of success on the merits of his claim.

If, at some future time, plaintiff intends to seek emergency injunctive relief from this court, he should be aware that this court requires a party seeking such relief to follow specific procedures. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff should pay particular attention to those parts of the procedure that require him to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition.

I turn then to plaintiff's motion for reconsideration of the order entered on May 18, 2005, granting in part and denying in part his request for leave to proceed in forma pauperis

in this action. This motion, too, will be denied.

In his motion, plaintiff attempts to suggest that this court erred in assessing his claims against certain defendants, but he does this by alleging facts to support his claims that were not alleged in his original complaint. In order to show error in this court's May 18 decision, plaintiff would have to point out either that the court overlooked facts that were alleged in his original complaint or inaccurately applied the law to his claims. Plaintiff has done neither of these things. If plaintiff believes he omitted important factual allegations from his original complaint, his recourse is to move to amend his complaint. Plaintiff's present motion cannot be construed as a proposed amended complaint because it includes legal argument to support the motion and it fails to allege certain facts included in plaintiff's original complaint that are critical to stating a claim against the existing defendants. In other words, plaintiff's submission is not a document that may be substituted for the original complaint as the operative pleading in the case.

Because an amended complaint will replace the original complaint, litigants should submit an entirely new complaint that will take the place of the one previously filed. In the amended complaint, plaintiff should include all of the allegations made in the initial complaint, draw a line through the allegations that he no longer wishes the court to consider and highlight all new allegations that he is adding to the complaint. In other words, it must be very clear to the court which allegations are new and which ones are old, as well as which

ones plaintiff is dropping.

ORDER

IT IS ORDERED that

1. Plaintiff's "Motion to Correct Dr. Heinzl to Give Me Medical Treatment , And Am Bleeding Again Internally, I Refused to Take Any More Meds," which is construed as a motion for a preliminary injunction directing defendant Heinzl to provide plaintiff with different medical treatment, is DENIED; and

2. Plaintiff's "Motion to Correct the Record and Supplement," which is construed as a motion for reconsideration of this court's order of May 18, 2005, is DENIED.

Entered this 10th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge