

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

-----  
JEFFREY STEVEN AKRIGHT,

Plaintiff,

v.

SHERIFF DAVID GRAVES;  
STEPHEN A. CULLINAN, Doctor;  
E. PETERS, Head Nurse; L. BAKER, Nurse;

Defendants.  
-----

ORDER

05-C-27-C

This case has been pending since January 31, 2005, when I granted plaintiff leave to proceed under 28 U.S.C. § 1915A on his claim that while he was an inmate at the Walworth County jail, defendants Graves, Cullinan, Peters and Baker violated his rights under the Eighth Amendment by failing to respond to his need for medical treatment of an ankle injury. In granting plaintiff leave to proceed on this claim, I noted that plaintiff had not identified in the body of his complaint the “nursing staff” who allegedly ignored his medical needs while he was in disciplinary segregation in early September 2004 or the “jail medical staff” who received paperwork describing his need for surgery and nevertheless refused to arrange for the surgery. However, construing plaintiff’s complaint liberally, I allowed him

to proceed on his claim against defendant Graves, the sheriff of Walworth County and the person in charge of the jail, as well as defendant Cullinan, a doctor, and defendants Peters and Baker, two nurses at the jail. In the same order, I instructed plaintiff that he was to serve the defendants with his complaint. I sent him a memorandum describing service procedures and the various forms he needed to obtain waivers of service of a summons from the defendants.

On April 1, 2005, after noting that the record did not contain plaintiff's proof of service of his complaint on the defendants, I entered an order directing plaintiff's attention to Fed. R. Civ. P. 4(m). Rule 4(m) directs courts to dismiss a complaint if the plaintiff fails to serve the defendants within 120 days of the filing of the complaint unless an extension is granted upon the plaintiff's showing of good cause for his failure to timely serve. In the order, I told plaintiff that although 120 days from the date of filing of his complaint would not expire until May 31, 2005, his lack of communication with the court suggested that he may no longer be interested in prosecuting this case. For that reason, I asked him to communicate in writing no later than April 22, 2005, what steps he had taken to serve his complaint on the defendants.

Now plaintiff has filed a documents titled "Motion in Response to 1st Day of April 2004 Letter from the Court" and "Amended Complaint."

In his "Motion in Response . . . ," plaintiff states that initially he could not serve his

complaint on the defendants because the “facility” would not give him 10 x 12 envelopes and postage “for two months.” Plaintiff says that on March 28, 2005, he finally got two envelopes, but when he asked for postage he was instructed to put his legal work in the envelopes and the facility would mail them out. Plaintiff says he did not trust the facility to mail his legal papers “to [his] power of attorney.” Finally, on April 4, 2005, plaintiff gave his “power of attorney” copies of his complaint to serve on the defendants personally. Plaintiff does not identify who his power of attorney is or when and if he ever obtained summonses from the clerk of this court, which would be necessary in order to effect personal service on the defendants. In any event, plaintiff states that his hope is that his motion to amend his complaint will buy him “more time for the serving process.”

Plaintiff’s motion to amend is not a ground for extending the 120-day time within which he must serve the existing defendants, particularly in view of the fact that the proposed amended complaint will not be allowed.

In his proposed amended complaint, plaintiff appears to be repeating his claims against defendants Graves, Cullinan, Peters and Baker. “Appears” is the operative word here, because plaintiff’s proposed amended complaint is missing at least one page of factual allegations. Plaintiff begins his factual allegations on complaint forms in a space titled “Statement of Claim.” However, paragraph 1 on the same page ends mid-sentence. On the next page the allegations resume mid-sentence in what appears to be paragraph 5, on a topic

unrelated to the topic raised in paragraph 1. Indeed, the allegations discernible in paragraphs 5 through 13, where the factual allegations of the amended complaint end, have nothing to do with plaintiff's claim that he was denied medical care for his ankle injury. Instead, plaintiff's new allegations concern his placement in administrative segregation status sometime in early 2005 and his inability to sleep because of noise in the administrative segregation unit in late February 2005 and March 2005. The proposed amended complaint contains no allegations of constitutional wrongdoing against any of the defendants against whom plaintiff already has been allowed to proceed.

In the caption of the proposed amended complaint, where the names of *all* the defendants are to be listed, plaintiff lists David Graves and a Michael T. Schmit. On the second page, plaintiff adds as defendants a James Delaney, Stephen Cullinan and E. Peters. On a third page, plaintiff lists as defendants L. Baker and individuals identified as "Powers - classification" and "Ziino - classification." However, plaintiff does not mention Schmit, Delaney or Powers in the body of his amended complaint and his allegations against Ziino are that Ziino asked plaintiff to write a letter and told plaintiff to limit his questions to her to questions about his classification. These allegations fall far short of stating a claim of constitutional wrongdoing against Ziino.

In summary, plaintiff's proposed amended complaint does not contain any allegations of substance relating to the claims on which plaintiff is already proceeding. If plaintiff wants

to raise new claims against new defendants, he will have to do so in a lawsuit separate from this one.

One final matter requires attention. Plaintiff states that defendant E. Peters no longer works for the health agency that subcontracted with the Walworth County Correctional Division to provide health care to inmates at the Walworth County jail. He asks that “the court” serve Peters for him.

Courts do not serve complaints for the litigants who appear before them. However, where a plaintiff obtains leave of the court to proceed in forma pauperis, the court is authorized to ask the United States Marshal to serve the indigent plaintiff’s complaint on the defendants. Here, plaintiff is not proceeding in forma pauperis. He paid the \$150 fee for filing his complaint. Therefore, he is responsible for serving the defendants or hiring a process server to serve his complaint for him. If he hires a process server, the process server should be able to learn defendant Peters’ address by contacting her former employer or performing an internet search, which are the same avenues the marshal would have to take to obtain her address.

#### ORDER

IT IS ORDERED that plaintiff’s motion to amend his complaint is DENIED.

Further, IT IS ORDERED that no later than May 31, 2005, plaintiff is to submit

proof that he has served his complaint on defendants David Graves, Stephen Cullinan, E. Peters and L. Baker. If, by May 31, 2005, plaintiff fails to submit proof of service of his complaint on the defendants, I will dismiss this action without prejudice to his filing his claims at a later time.

Entered this 20th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge