

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

STEVEN D. STEWART,

Plaintiff,

v.

C.O. BARR,

Defendant.

ORDER

05-C-293-C

In an order dated March 17, 2006, I granted summary judgment to defendants on plaintiff's claims that 1) former defendants Govier, Stowell and McDaniel violated his rights under the First Amendment; and 2) former defendants Cox and Sawinski were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. A third claim remains for trial: that defendant Barr acted with deliberate indifference to plaintiff's serious medical needs when he confiscated plaintiff's prescription medication for no valid reason.

Now plaintiff has submitted a letter dated March 14, 2006, in which he advises the court that "6 or 7 guards" recently beat him up, broke a bone in his elbow and undid the work of surgeons who had repaired his rectal prolapse on February 22, 2006. He claims he is in horrible pain, has not "used the to[i]let in 11 days" and has "not eat[en] lunch and

dinner since March 8, 2006” (presumably because of his inability to digest his food properly). Plaintiff contends that he has a kidney infection and that his life is in “immediate danger.” According to plaintiff, prison officials refuse to take him to the hospital despite his repeated requests. He urges this court’s intervention to insure he receives the medical attention he needs.

I construe plaintiff’s letter as including a motion for a preliminary injunction. Although the motion will be denied, because of the serious nature of the plaintiff’s allegations and his history of severe medical problems, I am requesting the attorney general to inquire into the facts plaintiff has alleged and take whatever action is appropriate to address his concerns.

Plaintiff’s motion raises new claims against individuals who are not defendants in this lawsuit and who have not been provided formal notice of plaintiff’s complaints against them. Therefore, the matters plaintiff raises in his letter cannot be considered in the context of this lawsuit. Plaintiff could raise his allegations in a new lawsuit; however, he would have to exhaust his administrative remedies, as required by the Prison Litigation Reform Act. Sheptin v. United States, 2000 WL 1788512, *6 (N.D. Ill. 2000) (no “imminent harm” exception to PLRA’s exhaustion requirements). If petitioner were to file a new lawsuit raising his new claims of deliberate indifference and excessive force, he would be free to move for a preliminary injunction in the context of that lawsuit.

Assuming plaintiff's factual allegations to be true, I recognize that plaintiff may not have the ability at this time to exhaust his administrative remedies and pursue a new federal lawsuit. In conjunction with defendants' recent motion for summary judgment, the court had the opportunity to review many of plaintiff's medical records. Although plaintiff's present allegations may be overstated, they bear enough resemblance to his recurring medical problems that they merit attention.

This court does not have the authority to intervene on plaintiff's behalf to afford him immediate relief for the injuries he alleges in his motion. Therefore, I cannot *order* the parties to undertake any action with respect to plaintiff's complaints. Defendants are under no obligation to report to the court on the outcome of their investigation. Meanwhile, plaintiff will have to make every effort to work with prison health officials to obtain prompt medical care if such care is necessary, and to exhaust his administrative remedies with respect to his new claims.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Entered this 24th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge