

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

MILFORD SLADER,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS,
United States Department of Justice,

Defendant.

ORDER

05-C-382-C

On July 29, 2005, I granted plaintiff leave to proceed in forma pauperis in this civil action brought under the Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. In his complaint, plaintiff alleged that defendant had failed to respond to his request for certain medical records. For relief, plaintiff sought an order from this court compelling defendant to produce the desired records for inspection and copying. On October 3, 2005, defendant filed an answer to plaintiff's complaint. In the answer, defendant asserts that plaintiff's lawsuit is moot because copies of the requested records in defendant's possession have been provided to plaintiff.

Now plaintiff has filed a "Motion to Convert Action to a 28 U.S.C. §§ 1331, 1342

Action.” Accompanying the motion is an entirely new complaint in which plaintiff names Dr. James Reed as a defendant, alleges facts to support a contention that Dr. Reed was deliberately indifferent to his serious medical needs and asks for millions of dollars in compensatory and punitive damages. Such an action is properly brought in federal court under 28 U.S.C. § 1331 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

Unfortunately for plaintiff, it is not possible to “convert” his original action to an entirely different kind of lawsuit. It is unfortunate that plaintiff did not learn until after he had filed this action that he could have obtained the documents by filing his Bivens action first and then using the discovery mechanisms available to him under the Federal Rules of Civil Procedure. However, he chose to file an action under the Freedom of Information and Privacy Acts. The court treated the action as plaintiff intended it to be treated and the defendant Federal Bureau of Prisons has responded to it. It is simply too late now for plaintiff to change his mind about the kind of action he wishes to file. If plaintiff wishes to pursue his claim for money damages against Dr. James Reed, he will have to do so in a separate action. To assist plaintiff in filing a new action, I am returning a copy of his new complaint to him so that he can resubmit it, together with a trust fund account statement for the six-month period immediately preceding the filing of the new complaint. The copy of the complaint plaintiff submitted for filing in this case will be placed in the file for record

purposes but no consideration will be given to it.

As for plaintiff's claim for relief in this action, it appears from defendant's answer that there is no live controversy remaining between the parties. According to defendant, defendant has given plaintiff all the records it has relating to his medical care. If plaintiff has already obtained the records he sought, this action is moot.

ORDER

IT IS ORDERED that

1. Plaintiff's "Motion to Convert Action to a 28 U.S.C. §§ 1331, 1342 Action" is DENIED.

2. Plaintiff may have until November 2, 2005, in which to show cause why this action should not be dismissed as moot. If, by November 2, 2005, plaintiff fails to advise the court what issues remain, if any, relating to the procurement of his medical records from

the defendant Bureau, the clerk of court is directed to enter judgment dismissing this action as moot.

Entered this 19th day of October, 2005.

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