

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

ANTHONY CORDOVA,

Plaintiff,

ORDER

v.

05-C-487-C

RICHARD SCHNEITER, Warden,
Wis. Secure Program Facility,

Defendant.

This is a civil action for declaratory and injunctive relief under 42 U.S.C. § 1983. In an order dated September 12, 2005, I granted plaintiff leave to proceed on his claim that defendant violated his constitutional rights under the Eighth Amendment of the United States Constitution when unnamed prison officials confiscated his dental bite plate and refused to issue a new one, causing him to suffer severe migraine headaches and attempt suicide.

Now before the court are plaintiff's motion to invoke the district court's supplemental jurisdiction, motion for admission of exhibits and a document captioned "declaration" that contains the heading "jury demand." Plaintiff's motion to invoke supplemental jurisdiction

will be denied because he does not allege that he filed a notice of his state law claim, as required by Wis. Stat. § 893.82. His motion for admission of exhibits will be denied as premature because documentary evidence can be considered by the court only at trial or in connection with certain motions, none of which have been filed in this case. Plaintiff demand for a jury trial is unnecessary because his case already has been scheduled for a jury trial on July 31, 2006.

A. Motion Invoking Supplemental Jurisdiction

When I granted plaintiff leave to proceed on his claim of deliberate indifference under the Eighth Amendment, I denied him leave to proceed on several other claims, including a claim that unnamed defendants deprived him of personal property, including his dental bite plate, in violation of the Fourteenth Amendment. In denying plaintiff leave to proceed on this claim, I stated:

The United States Supreme Court has held that as long as state remedies are available for the loss of property, intentional deprivation of property does not constitute a constitutional violation. Hudson v. Palmer, 468 U.S. 517, 533 (1984). The State of Wisconsin provides several post-deprivation procedures for challenging the taking of property, including replevin and tort remedies. Wis. Stat. Chap. 810 & 893. Section 810.01 provides a remedy for the retrieval of wrongfully taken or detained property. Section 893.51 governs the filing of tort actions for damages related to the wrongful taking of personal property. Because petitioner has post-deprivation procedures available to him through the state courts, he will be denied leave to proceed on his claim that his personal property was taken in violation of the Fourteenth Amendment.

Order dated Sept. 12, 2005, at 15.

Although plaintiff's motion is difficult to discern, I understand him to be asking the court to exercise supplemental jurisdiction over his state law property claim regarding his dental bite plate. Generally, federal courts may exercise supplemental jurisdiction over state law causes of action "that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). This means that a federal court can hear both federal and state law claims when the central facts of the federal claim are also the central facts of the state law claim. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). In this case, the confiscation of plaintiff's dental bite plate is certainly intertwined with his claim that prison officials were deliberately indifferent to his need for a dental bite plate.

However, no matter how intertwined a state and federal claim may be, a federal court cannot exercise supplemental jurisdiction if a plaintiff has failed to follow state procedures relevant to his state law claim. Wisconsin Statutes § 893.82(3) requires a claimant bringing a civil action against a state officer or employee to serve written notice of the claim on the Wisconsin attorney general within 120 days of the events giving rise to the claim. The written notice must include the time, date, and circumstances of the event causing the injury

or damage for which the claimant seeks relief, as well as the names of the state officials involved. Id. When a plaintiff has failed to comply with the notice of claim statute, this court lacks jurisdiction to hear his claim. Saldivar v. Cadena, 622 F. Supp. 949, 959 (W.D. Wis. 1985) (noting that Wis. Stat. § 893.82 “imposes a condition precedent to the right to maintain an action”). Plaintiff has not averred that he gave timely notice to the Wisconsin Attorney General of the circumstances surrounding the confiscation of his bite plate. Therefore, plaintiff’s motion invoking supplemental jurisdiction will be denied at this time.

B. Motion for Admission of Exhibits

Plaintiff has filed a motion for admission of exhibits, to which he has attached three unauthenticated documents titled “Health Service Request” and documents relating to his use of the inmate complaint system, some of which have been altered with plaintiff’s personal notations. It is not appropriate for plaintiff to submit evidentiary materials outside of trial unless the materials are related to a pending motion, such as a motion for summary judgment or for a preliminary injunction. In this case, trial is months away and there are no pending motions for which submission of evidence is proper. Therefore, although I will keep a copy of plaintiff’s submissions for record purposes, I am returning plaintiff’s submissions to him in the event he wishes to use them at some future time.

Plaintiff should be aware that if he intends to submit documents as evidence in connection with a proper motion, he must properly authenticate them if they are to be admissible, either by attaching the documents to an affidavit or introducing other evidence indicating that the documents are what they purport to be. Fed. R. Evid. 901(a). For example, if plaintiff were to submit copies of his requests for attention from the health services unit, he should attach to the documents his own affidavit in which he avers that the health service request forms are true and correct copies of forms he completed on such and such a date and submitted to the health services unit. Similarly, with respect to the forms reflecting his use of the inmate complaint system, he should attach these documents to an affidavit in which he avers that these forms are true and correct copies (with certain additional notations) of the complaint and appeal he filed regarding his dental bite plate and the responses prison officials made to his complaint and appeal. Because it is not proper for plaintiff to submit evidence at this time, I will deny his motion for admission of exhibits.

ORDER

_____ IT IS ORDERED that

1. Plaintiff's motion to invoke supplemental jurisdiction is DENIED;

2. Plaintiff's motion for admission of exhibits is DENIED.

Entered this 2nd day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge
