IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAY J. SCHINDLER,

ORDER

Plaintiff,

v.

05-C-705-C

MARSHFIELD CLINIC, PAUL L. LISS, ROBERT K. GRIBBLE, DONALD B. KELMAN JOHN H. NEAL, RODNEY W. SORENSON, TOM FACISZEWSKI, KEVIN RUGGLES, JAMES P. CONTERATO, FREDERIC P. WESBROOK, GARY P. MAYEUX, ROBERT A. CARLSON, DAVID J. SIMENSTAD, TIMOTHY R. BOYLE, DANIEL G. CAVANAUGH, GARY R. DEGERMAN, DOUGLAS J. REDING, and IVAN B. SCHALLER,

Defendants.

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In this civil action for injunctive and monetary relief, plaintiff Jay J. Schindler contends that defendants defamed him, breached and tortiously interfered with his employment contracts and potential employment contracts and inflicted emotional distress upon him intentionally and negligently. Jurisdiction is present under 28 U.S.C. § 1332.

Now before the court is plaintiff's motion for leave to amend and supplement the complaint under Fed. R. Civ. P. 15(a) and (d), in order to add factual allegations regarding

the ways in which he believes defendants have defamed him and tortiously interfered with his economic relationships with former patients. (Plaintiff asserts that his motion arises under Fed. R. Civ. P. 15(b) as well, but because that rule is plainly inapplicable, I will not address it. See, e.g., 3 James Wm. Moore et al., Moore's Federal Practice, § 15.18 (3d ed. 2005).) Because I find that permitting plaintiff to amend or supplement his complaint at this time would prejudice defendants and cause undue delay, the motion will be denied.

Plaintiff wishes to add the following facts to his complaint:

1. Sometime during the summer of 2006, plaintiff obtained affidavits from several of his former patients, in which the patients averred that defendant Marshfield Clinic refused to help them locate plaintiff after his employment at the clinic was terminated.

2. On July 13, 2006, defendant Marshfield Clinic filed a report with the National Practitioners Data Bank reporting a $1 million settlement payment it had made to a patient, T. S., who had been injured during a surgery plaintiff performed. Under a heading titled "Description of the Allegations and Injuries or Illnesses Upon Which the Action or Claim Was Based," the following information was recorded:

> A trial spacer was inadvertently advanced into the patient's spinal column causing damage to the cord. The injury was caused by what others considered to be an inappropriate utilization of the spacer. Patient sustained an incomplete spinal cord injury (ASIA category D) resulting in permanent left upper extremity spastic hemiplegia and incomplete tetraplegia, together with accompanying disabilities which are severe.

According to plaintiff, T. S. is not quadriplegic or tetraplegic; she suffers from muscle

weakness, not paralysis.

Plaintiff asserts repeatedly throughout the brief in support of his motion that he is not trying to add new claims to his complaint; only new facts. That is not quite true, for several reasons. First, under Fed. R. Civ. P. 8, a complaint need contain only "a short, plain statement showing that the pleader is entitled to relief." The primary purpose of Rule 8 is rooted in fair notice: "a complaint must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is." Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 775 (7th Cir. 1994). If plaintiff's proposed additions to his complaint were merely detailed facts fleshing out the claims raised in his original complaint, he would have no need to amend or supplement. However, the changes plaintiff proposes to make are more than cosmetic.

In his original complaint, plaintiff alleged that defendants tortiously interfered with his prospective economic relationships with potential employers by failing to complete paperwork verifying his past affiliation with defendant Marshfield Clinic. In addition, plaintiff alleged that defendants defamed him by making false statements about his medical skill and surgical complications for which he was allegedly responsible. Insofar as his original complaint invoked the torts of defamation and interference with prospective economic advantage, plaintiff is correct in asserting that he raises no "new claims" in his proposed amended complaint. However, the new facts he alleges indicate that he *is* pursuing new theories of liability grounded in new facts with respect to each of his pre-existing claims.

Nothing in the original complaint put defendants on notice that they might be required to defend their failure to provide plaintiff's contact information to his former patients, or prove the truth of the information contained in the July 13, 2006 National Practitioners Data Bank report (which was not drafted at the time plaintiff's original complaint was filed).

Rule 15(a) of the Federal Rules of Civil Procedure states that "a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served" and that otherwise amendment is permissible "only by leave of court." Whether to grant leave to amend a pleading pursuant to Rule 15(a) is within the discretion of the trial court. Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995), and "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).

Rule 15(d) permits parties, with leave of the court, to "supplement[] a pleading as a result of events subsequent to the filing of the original pleading." Glatt v. Chicago Park District, 87 F.3d 190, 194 (7th Cir. 1996). A court may deny a motion to supplement for the same reasons it may deny a motion to amend. See, e.g., Otis Clapp & Son, Inc. v. Filmore Vitamin Co., 754 F.2d 738, 743 (7th Cir. 1985) ("Denial by the court of a motion to supplement the complaint because it would cause undue or further delay of the action when other parties are prepared to proceed is not an abuse of discretion.").

Although leave to file an amended or supplemental complaint should be granted liberally, a request to amend may be denied on several grounds, including undue delay. Butts v. Aurora Health Care, Inc., 387 F.3d 921, 925 (7th Cir. 2004); Eastern Natural Gas

Corp. v. Aluminum Co. of America, 126 F.3d 996, 999 (7th Cir. 1997) (leave should be granted freely "in the absence of undue delay, undue prejudice to the party opposing the motion, or futility of the amendment").

In this case, plaintiff admits that he had the information he needed to amend and supplement his complaint in the summer of 2006, well before the October 10, 2006 deadline for filing dispositive motions. Nevertheless, he delayed filing his motion because he believed that "had [he] drafted and submitted an amended complaint between July and September, it would have been unduly distracting and time-consuming for the parties, given their work on unrelated summary judgment issues." Dkt. #149, at 3. Plaintiff is mistaken. Rather than distracting the parties from briefing their summary judgment motions, a timely-filed motion to amend the complaint would have permitted them to prepare for their second round of summary judgment briefs, which were filed the day before plaintiff filed his motion to amend. Although plaintiff suggests that the court could cure any potential prejudice to defendants by permitting a *third* round of summary judgment on his new claims, the suggestion is beyond unreasonable. When a party unnecessarily waits to bring a motion to amend or supplement his complaint, as plaintiff has done here, courts are not "require[d] . . . to tolerate such delays." Bethany Pharmacal Co., Inc. v. QVC, Inc., 241 F.3d 854, 862 (7th Cir. 2001); Cleveland v. Porca Co., 38 F.3d 289, 297-98 (7th Cir. 1994) (holding that the district court did not abuse its discretion in refusing to allow the plaintiffs to amend their complaint when they waited until after discovery had been completed and summary

judgment motions had been fully briefed before filing their motion to amend). Plaintiff's motion will be denied.

ORDER

IT IS ORDERED that

1. Defendants' motion to file a surreply is GRANTED.

2. Plaintiff's motion for leave to amend his complaint is DENIED.

Entered this 8th day of November, 2006.

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