

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

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EDUARDO M. PEREZ,

Plaintiff,

v.

BHS-DOC R/N SHARON ZUNKER,

Defendant.

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ORDER

05-C-711-C

On May 4, 2007, this court held a hearing on a motion filed by plaintiff's appointed counsel in which counsel asked for permission to withdraw from this case on the ground that they could not ethically represent plaintiff or fulfill their duties as officers of the court if they were to advance plaintiff's view of the evidence and the merits of his case. At the hearing, plaintiff received the assistance of a certified court interpreter. I explained to plaintiff that if I were to grant counsel's motion, it would not be possible to appoint him a new lawyer. In addition, I told him that I could not promise him that if he were to represent himself, he would be allowed to submit documents to the court in Spanish. I did advise him that he could use the May 4 order to show prison officials that he had a language barrier and might need additional time in the library under the institution's regular policies. Plaintiff indicated

that he understood these potential impediments to his ability to represent himself. Nevertheless, he stated that he had no objection to his lawyers' motion to withdraw. Therefore, the motion was granted in an order entered that same day.

Subsequently, plaintiff filed a motion to amend his complaint. That motion was denied in an order dated May 18, 2007. Presently, the parties are briefing defendants' motion for summary judgment, which was filed on May 24, 2007. Taking into account his difficulties with the English language, the court has granted plaintiff an extended deadline to file his response. Unfortunately, instead of devoting his limited time to the response, plaintiff has filed a motion for reconsideration of the May 18, 2007 order denying his motion to amend, a motion for appointment of an interpreter, and a notice of appeal from the May 18 order. I will address each matter in turn.

Plaintiff's motion for reconsideration of the May 18 order will be denied. As I told plaintiff in that order, the amendments he asked to make to his complaint are futile. In other words, the allegations of fact in his proposed amended complaint are insufficient to state a claim of a violation of his constitutional rights. Nothing in plaintiff's motion for reconsideration persuades me that this assessment of his proposed amended pleading was erroneous. To the extent that plaintiff is attempting in his present motion to further revise his factual allegations, his efforts are unavailing. His proposed amended complaint is what it is. Even if he were to draft a third proposed amended complaint, I would deny it as

untimely. This case has simply progressed too far to allow plaintiff to alter the contours of his claims or add new parties to the suit.

Plaintiff's motion for a court-appointed interpreter also will be denied. First, Congress has provided no funding to the federal courts for the purpose of paying interpreters to assist litigants in civil cases. Second, and more important, plaintiff has waived any argument he might have that his inability to write or speak English well prevents him from prosecuting his case. The whole purpose behind the decision to appoint counsel to represent plaintiff was to provide him with the tools necessary to prosecute his claim in English. His lawyers, who were bilingual, were his interpreters. Plaintiff's decision to disregard their professional advice and proceed without their assistance might well make it difficult for him to continue with his case, but that is a consequence about which he was aware and one with which he must now live. If plaintiff needs help translating his submissions into English, he will have to obtain such help on his own.

Finally, plaintiff has filed a notice of appeal from the May 18, 2007 order denying his motion to amend the complaint. Because the notice of appeal is not accompanied by the \$455 fee for filing an appeal, I construe the notice to include a request for leave to proceed in forma pauperis on appeal. Unfortunately, this request must be denied, because I must certify that plaintiff's appeal is not taken in good faith.

First, the May 18 order cannot be appealed until after this case has been resolved in

its entirety unless I amend the order to include a determination that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292. Such an amendment is not appropriate in this case. There exists no substantial ground for a difference of opinion on the question whether plaintiff should have been allowed to amend his complaint to add factual allegations or additional defendants on legally meritless claims. Moreover, an immediate appeal will not materially advance the ultimate termination of this litigation. It would serve only to delay it.

Even if the May 18 order were an appealable order, there is no legally meritorious argument that can be made on appeal concerning this court's decision to deny plaintiff an opportunity to amend his complaint because his proposed amendments are futile. Because plaintiff's appeal is legally frivolous, I must certify that it is not taken in good faith and deny his request for leave to proceed in forma pauperis on appeal. Under the 1996 Prison Litigation Reform Act, this means that plaintiff cannot take advantage of the partial payment provision of 28 U.S.C. § 1915 and must instead pay the \$455 filing fee in full immediately.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the May 18, 2007 order denying his motion to amend his complaint in this case is DENIED.

Further, IT IS ORDERED that plaintiff's motion for appointment of an interpreter to assist him in this case is DENIED.

Finally, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal from the May 18, 2007 decision is DENIED. I certify that plaintiff's appeal is not taken in good faith. Plaintiff is to pay the \$455 fee for filing his appeal immediately. If he fails to pay the fee and has the money to do so, it will be understood that he is giving up his ability to proceed in forma pauperis in any proceeding or on any additional appeals until the fee is paid in full. If plaintiff does not presently have the full \$455 in his prison account, prison officials may apply all of whatever portion of the fee plaintiff has in his account to his obligation in this case and take whatever additional funds may be deposited in his account in the future as necessary to pay the balance of the fee. The clerk of court is requested to insure that the court's records reflect plaintiff's obligation

to pay the \$455 fee for filing an appeal.

Entered this 19<sup>th</sup> day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge