

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

WENDELL DWAYNE O'NEAL
202 Honorway
Madison, Alabama 35758,

Plaintiff,

v.

TONY ATWAL, MARK F. ANDERSON
and LAWRENCE HAMMERLING,

Defendants.

ORDER

05-C-739-C

This civil action for monetary relief began in December 2005, when plaintiff Wendell Dwayne O'Neal filed a complaint pursuant to 42 U.S.C. §§ 1983 and 1985(3) alleging various claims against defendants Tony Atwal, Mark F. Anderson and Lawrence Hammerling, who are employed as public defenders in the state of Minnesota. In an order dated January 13, 2006, I screened plaintiff's complaint, dismissed all of the federal claims but granted him leave to proceed against defendants on a state law claim, intentional infliction of emotional distress, because plaintiff's allegations suggested that this court might have jurisdiction under the diversity statute, 28 U.S.C. § 1332(a)(1). I gave plaintiff until

February 13, 2006 in which to complete and submit marshal's service and summons forms for each defendant.

Since January 13, this case has been stuck in neutral. Instead of completing service of process on defendants, plaintiff has filed motions, proposed amended complaints and two other lawsuits. On January 18, 2006, plaintiff filed a motion to reconsider the January 13 order. On January 19, 2006, plaintiff filed a proposed amended complaint. Four days later, plaintiff filed exhibits to his proposed amended complaint. On January 30, 2006, plaintiff filed a motion to consolidate this case with another of his cases in this court, No. 06-C-40-C. This flurry of filings, combined with similar activity in his other two cases and repeated telephone calls plaintiff was making to the clerk's office to inquire about the status of his filings, prompted the court to advise him on February 2, 2006 that it would not take any action in any of his cases until two weeks had passed without his filing any new documents attempting to change the nature or scope of his claims. Plaintiff filed exhibits to a motion for preliminary injunction in the this case on February 3 and 6, 2006. (No motion for preliminary injunction has been filed in this case.)

After more than a month had passed without any new filings from plaintiff, the court issued an order on March 8, 2006, denying plaintiff's motion for reconsideration and declining to allow plaintiff to proceed on any of the claims raised in his proposed amended complaint. Also, I extended the deadline in which plaintiff was to submit completed marshal

service and summons forms to March 17, 2006. On March 27, 2006, plaintiff filed a motion to extend this deadline because he had been arrested in Wisconsin on March 4, 2006 and taken to Minnesota to answer charges that he had violated the terms of a sentence of probation he received in connection with a conviction in Minnesota. In an order dated April 4, 2006, I granted plaintiff's request for an extension and gave him until April 17, 2006 in which to submit marshal service and summons forms. Also, I ordered plaintiff to provide answers to a set of questions intended to help the court determine plaintiff's domicile because a question had arisen whether this court has jurisdiction over plaintiff's claim under the diversity statute. I warned plaintiff that failure to submit these materials by April 17 would result in dismissal of his case.

It is now past April 17. Plaintiff has not submitted completed marshal service forms, summonses or answers to the questions put to him in the April 4 order. Instead, plaintiff has filed a motion to dismiss his original complaint, a third proposed amended complaint and an affidavit in support of his request for leave to proceed in forma pauperis. He asks the court to replace his original complaint with his third proposed amended complaint and for another extension of his "service deadline." That request will be denied. Plaintiff's third proposed amended complaint names defendants Atwal, Anderson and Hammerling as defendants and alleges that defendants conspired to deny plaintiff assistance of counsel in connection with his efforts to withdraw his guilty plea to a charge of attempted robbery. I

have already denied plaintiff leave to proceed on his claims that defendants' actions violated his constitutional rights. Nothing in his third proposed amended complaint persuades me that I erred in denying him leave to proceed on those claims.

Because plaintiff's motion to dismiss his complaint and substitute his third proposed amended complaint will be denied, the court is left with plaintiff's failure to submit the forms necessary to complete service of process and his failure to submit an affidavit containing answers to the questions put to him in the April 4 order. I ordered plaintiff to answer those questions after learning that petitioner had been arrested on March 4, 2006 and taken to Minnesota. As I explained in the April 4 order, plaintiff's return to Minnesota raised a question about his domicile for the purpose of the diversity statute. Federal courts are "obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction." Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278 (1977). Because plaintiff has failed to provide answers to the questions posed to him, the court is unable to determine his domicile. Under this circumstance, I have no choice but to conclude that this court lacks jurisdiction over his intentional infliction of emotional distress claim under the diversity statute. Accordingly, I must dismiss this case for lack of jurisdiction. The dismissal will be without prejudice to plaintiff's refiling his claim against defendants in a Minnesota court.

ORDER

IT IS ORDERED that

1. Plaintiff Wendell Dwayne O'Neal's motion to dismiss his complaint and substitute his third proposed amended complaint as the operative pleading is DENIED; and

2. This case is DISMISSED on the court's own motion without prejudice for lack of jurisdiction. The clerk of court is directed to close the file.

Entered this 20th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge