

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

JESUS MAR GARCIA,

Plaintiff,

v.

DOCTOR REED, Medical Doctor,

Defendant.

ORDER

06-C-94-C

In an order dated April 4, 2006, I granted plaintiff leave to proceed in forma pauperis in this civil action for injunctive and monetary relief brought pursuant to 28 U.S.C. § 1331 and Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).¹ In his complaint, plaintiff alleges that defendant Reed refuses to provide him alternative treatment for his acid reflux disease, despite knowing that plaintiff's condition has not improved with the medications plaintiff has been directed to take. On June 16, 2006, defendant filed an answer to plaintiff's complaint. Now plaintiff has filed a document titled "Plaintiff's

¹In the April 4 order, I inadvertently cited 42 U.S.C. § 1983 as the statute governing jurisdiction of the matter raised in plaintiff's complaint. However, because plaintiff is suing federal and not state defendants, the correct statute is 28 U.S.C. § 1331.

Original Petition,” which I construe as a proposed amended complaint and a motion for leave to file an amended complaint.

In the proposed amended complaint, plaintiff appears to be restating in greater detail the very same claim he asserted against defendant Reed in his original complaint. Pursuant to Fed. R. Civ. P. 15, a plaintiff may amend his complaint only with leave of the court after an answer or a motion for summary judgment has filed. Because the changes plaintiff wants to make to his complaint are primarily cosmetic and not substantive, it will serve only to delay these proceedings if I allow the amendment. Therefore, plaintiff’s motion for leave to amend his complaint will be denied. Plaintiff will have ample time to provide detail concerning his claim against defendant Reed in an affidavit in connection with a motion for summary judgment or at trial.

ORDER

IT IS ORDERED that plaintiff’s motion to amend his complaint with the proposed

amended complaint he submitted on June 19, 2006, is DENIED.

Entered this 28th day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge