

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

WILLIE HOGAN,

Petitioner,

v.

OPINION AND
ORDER

06-C-0283-C

STATE OF WISCONSIN,
STEVE WATTERS, Director (Sand Ridge Secure Treatment Center)
STEVE SCHNEIDER, Security Director (S.R.S.T.C.)
DAVID THORNTON, Treatment Director (S.R.S.T.C.)
TIM THOMAS, Unit Manager (S.R.S.T.C.)

Respondents.

This is a proposed civil action for declaratory, injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Willie Hogan is detained as a patient at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. He contends that defendants (1) violated his constitutional right to due process and mental health care; (2) engaged in a conspiracy to violate his civil rights; (3) violated his rights under several federal statutes; and (4) violated his rights under several state laws. He seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28

U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief. Petitioner will be denied leave to proceed in forma pauperis because he failed to state a federal cause of action and the court will not exercise supplemental jurisdiction over his state law claims.

In his complaint and attachments, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Willie Hogan is a patient at Sand Ridge Secure Treatment Center in Mauston, Wisconsin, confined pursuant to the state of Wisconsin Sexually Violent Persons Law, Wis. Stat. ch. 980. Respondents are employed at Sand Ridge: Steve Watters is the director; Steve Schneider is the security director; David Thornton is the treatment director;

and Tim Thomas is a unit manager.

On October 17, 2002, petitioner was placed in segregation “for the symptom of the [petitioner’s] mental illness and as an alternative to mental health care.” In a “Notice of Claim” dated December 6, 2005, from petitioner to the Wisconsin Attorney General, petitioner claimed that on October 17, 2002, Sand Ridge staff members Rosie Halverson and Wayne Haines wrote a “Behavior Disposition Record” (BDR #2930) concerning petitioner, stating that he had engaged in inappropriate touching, sexual misbehavior and horseplay. As a result, petitioner was placed in “Unit AD” on “72-hour reassignment status.” On October 21, 2002, petitioner was given a copy of BDR #2930. A hearing took place that same day, but he was not allowed to introduce witnesses on his behalf or have a staff advocate assist him in defending himself against the charges. On or about May 16, 2005, petitioner attended a discharge hearing, where an unidentified individual representing Sand Ridge reported that petitioner’s record reflected that he had engaged in inappropriate sexual behavior. When he heard this, petitioner contacted his treatment team and requested that he undergo a polygraph test in order to prove that the information in his record regarding sexual misbehavior was false. Subsequently, at another discharge hearing held in July 2005, BDR #2930 still appeared in petitioner’s record. Former unit manager Larry Fuchs told petitioner that BDR #2930 would be modified to allege only horseplay (and not inappropriate touching and sexual misbehavior), but this was not done. On October 13,

2005, petitioner underwent a polygraph test, which indicated that he was not lying when he stated that he had not engaged in inappropriate sexual behavior. On November 21, 2005, the polygraph examiner issued a report concluding that “no deception [was] indicated” and that petitioner was being truthful.

OPINION

As an initial matter, I note that petitioner appears to have modeled his complaint after that of Kenneth Parrish, who recently filed an almost identical complaint in this court. Petitioner may have fared better if he had provided a clear and concise statement of the facts of his case in his own words. Instead, petitioner’s complaint consists almost entirely of confusing and often nonsensical lists of federal and state laws that were allegedly violated, but it does not provide facts to support the allegations or show how the respondents were involved in the alleged violations.

A. Federal Constitutional Violations

_____ Although it is difficult to understand what petitioner’s claims are, I understand him to be alleging that his constitutional right to procedural due process was denied when he did not receive advance notice and was not allowed to have witnesses or an advocate at the proceedings in October 2002 when he was found guilty of sexual misconduct. In addition,

I understand him to be alleging that his Eighth Amendment rights were violated when he was denied mental health care while he was in segregation status. However, petitioner has not alleged any facts suggesting that one or more of the named respondents were involved personally in the alleged constitutional wrongdoings.

As an initial matter, I note that the Eleventh Amendment denies federal courts the authority to entertain suits brought by private parties against a state without its consent. Quern v. Jordan, 440 U.S. 332, 337 (1979). Therefore, petitioner will be denied leave to proceed against respondent State of Wisconsin.

Petitioner does not allege in his complaint that any of the respondents failed personally to allow him witnesses or an advocate at his disciplinary proceedings. Also, he does not allege who denied him mental health treatment while he was in segregation, although he claims broadly that his rights were violated by “state officials, agencies and/or departments and their agent/employees.” Therefore, I assume petitioner is suing respondents Watters, Schneider, Thornton and Thomas because they are assigned supervisory responsibility for the individuals who allegedly violated petitioner’s constitutional rights.

The Court of Appeals for the Seventh Circuit has held that to recover damages under 42 U.S.C. § 1983, a petitioner must establish each respondent’s personal responsibility for the claimed deprivation of a constitutional right. A respondent may be liable when he directly participates in the deprivation, although direct participation is not required; he may

be liable if his participation is indirect. An official satisfies the personal responsibility requirement “if she acts or fails to act with a deliberate or reckless disregard of petitioner’s constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge or consent.” Smith v. Rowe, 761 F.2d 360, 369 (7th Cir. 1985); Crowder v. Lash, 687 F.2d 996, 1005 (7th Cir. 1982). In order for a supervisory official to be found liable under § 1983, there must be a “causal connection, or an affirmative link, between the misconduct complained of and the official sued.” Smith, 761 F.2d at 369; Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). The doctrine of respondeat superior, under which a superior may be liable for a subordinate’s tortious acts, does not apply to claims under § 1983. Polk County v. Dodson, 454 U.S. 312, 325 (1981). Petitioner has not alleged facts suggesting how any of the respondents were directly or indirectly involved in the alleged constitutional deprivations. Because petitioner has not identified as respondents the individuals who participated personally in allegedly denying him his constitutional rights, I will deny petitioner leave to proceed in forma pauperis on his claims brought under § 1983.

B. Conspiracy

Petitioner contends that there was a “conspiracy to interfere with Civil Rights under 42 USC 1985.” Cpt. ¶ 9. He does not specify what the alleged conspiracy entailed or which

provisions of § 1985 were violated. The only portions of § 1985 that petitioner could conceivably invoke are the second clause of § 1985(2) or § 1985(3), which cover general equal protection violations. Section 1985(1) applies to violations of rights of United States employees and the first clause of § 1985(2) applies to violations of rights during court proceedings. The second clause of § 1985(2) and § 1985(3) both require proof of a racial or otherwise class-based discriminatory animus behind the defendants' actions. Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993); Griffin v. Breckenridge, 403 U.S. 88 (1971), Williams v. St. Joseph Hospital, 629 F. 2d 448, 451 (7th Cir. 1980).

Petitioner did not allege any facts regarding his race or class membership or facts suggesting that actions were taken against him because of his race or class. Moreover, to state a claim under § 1985, petitioner would have to allege facts suggesting that a conspiracy occurred (a conspiracy under § 1985 requires two or more individuals acting in concert to deprive petitioner of his rights). Petitioner has alleged no facts suggesting that two or more respondents acted in concert to deprive him of any rights. Therefore, I will deny petitioner leave to proceed on his § 1985 claim.

C. Federal Statutes

In his complaint (paragraph 9), petitioner lists four federal statutes under which his rights were allegedly violated: “Persons with Disabilities Act,” “Federal Fair Labor Standards

Act,” “Patient and Civil Rights Protection,” and “Rehabilitation Act.” I assume that by “Persons with Disabilities Act” petitioner means the Americans with Disabilities Act. I am not aware of a law called “Patient and Civil Rights Protection.” Petitioner cites 42 U.S.C. § 1331, which is the repealed Reconversion Unemployment Benefits for Seamen Act and 42 U.S.C. § 1343, which does not exist.

Petitioner does not allege how his rights under these statutes were allegedly violated and I can discern no violation. Although petitioner is not expected to provide elaborate legal arguments in the complaint, he also cannot merely name a number of statutes and expect the court to peruse the entire text of each statute to determine whether any of its clauses were potentially violated. Petitioner will be denied leave to proceed on his claim that his federal statutory rights were violated.

D. State Law Claims

The existence of supplemental jurisdiction is predicated on the existence of a substantial federal claim and a common nucleus of operative fact as to state and federal claims such that the claims would ordinarily be tried in one proceeding. Mine Workers v. Gibbs, 383 U.S. 715 (1966). Because I am denying petitioner leave to proceed on all of his federal claims, I will decline to exercise supplemental jurisdiction over his state law claims.

ORDER

IT IS ORDERED that

1. Petitioner Willie Hogan's request for leave to proceed in forma pauperis is DENIED as to all of his claims.

2. The clerk of court is directed to close the file.

Entered this 13th day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge