

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

DWAYNE ALMOND,

Plaintiff,

ORDER

v.

06-C-446-C

STATE OF WISCONSIN and LT. LESATZ,

Defendants.

DWAYNE ALMOND,

Plaintiff,

06-C-451-C

v.

GREGORY GRAMS and DR. JANET WALSH,

Defendants.

In separate orders dated August 23, 2006, I granted plaintiff Dwayne Almond leave to proceed in forma pauperis in these two cases. In case no. 06-C-446-C, I allowed plaintiff to proceed against defendant Mark Lesatz on a claim that Lesatz violated plaintiff's Eighth Amendment rights on April 1, 2006, when he refused to transport plaintiff to a hospital or

consult with a medical professional by telephone after plaintiff injured his back and collapsed onto his cell floor. Inadvertently, defendant State of Wisconsin was not dismissed from case no. 06-C-446-C when I screened plaintiff's complaint. That oversight will be rectified in this order. In case no. 06-C-451-C, I allowed plaintiff to proceed against defendants Gregory Grams and Janet Walsh on his claim that these defendants are refusing to provide him with access to mental health care.

Also in the August 23 orders, I noted that plaintiff's submissions revealed that he is mentally retarded and suffers from paranoid schizophrenia and psychosis. I stated that if his cases were to proceed beyond the pleading stage and were to survive a motion to dismiss for failure to exhaust administrative remedies if such a motion were to be filed, I would stay further proceedings and attempt to find a lawyer willing to assist plaintiff with his claims. Now before the court are documents plaintiff signed on August 25, 2006, which I construe as motions for appointment of counsel in each of these cases. Because the motions appear to have crossed in the mail with the court's orders of August 23, it is possible that plaintiff did not know that I had already decided that appointment of counsel will be warranted if his claims are not dismissed at the outset for his failure to exhaust his administrative remedies. Until defendants have had an opportunity to respond to plaintiff's complaints and file such motions if they are appropriate, however, it is too early to grant plaintiff's motions. Therefore, plaintiff's motions will be denied as premature.

I take this opportunity to note that recently, plaintiff has been submitting letters and what appear to be original documents and photocopies of portions of his medical and mental health records. He does not indicate on his submissions for which of his two cases his submissions are intended and, equally important, he does not indicate that he has served a copy of the documents on counsel for the defendants in whatever case he wishes the materials to be filed. Therefore, I will not consider these submissions.

Even if plaintiff had written on the documents the name of the particular case in which he wanted them to be filed and had shown on the face of the documents that he served a copy on opposing counsel as he is required to do, I could not consider his submissions. Evidentiary materials such as a party's medical records are not to be submitted to this court outside the context of a trial or a motion requiring the submission of evidentiary materials, such as motions for preliminary injunction or summary judgment. Because there are no motions presently pending before the court for which plaintiff has been asked to submit evidence and because trial has not yet been scheduled, I am returning plaintiff's documentary submissions to him. To the extent plaintiff may have submitted the documents for the court to hold for his use as possible future evidence in his case, he should be aware that it is not proper to file evidence simply for storage in the court's file. This court does not have the space to store evidentiary materials that have not been submitted to support or oppose a pending motion or that have not been made a part of the record at trial.

Finally, defendant State of Wisconsin will be dismissed from case no. 06-C-446-C. The state of Wisconsin is not a proper defendant in plaintiff's lawsuit because it is not a "person" that may be sued for money damages under § 1983. Williams v. Wisconsin, 336 F.3d 576, 580 (7th Cir. 2003).

ORDER

IT IS ORDERED that plaintiff's motions for appointment of counsel are DENIED as premature.

Further, IT IS ORDERED that defendant State of Wisconsin is DISMISSED from case no. 06-C-446-C.

For the reasons stated above, plaintiff's recently filed evidentiary submissions are being returned to him with a copy of this order.

Entered this 14th day of September, 2006.

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