

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

COREY C. ISAACSON,

Plaintiff,

v.

GOERGE GOTHNER and
CITY OF SUPERIOR POLICE
DEPARTMENT,

Defendants.

ORDER

07-121-C

In this civil action for monetary relief brought under 42 U.S.C. § 1983, plaintiff Corey Isaacson contends that defendant Gothner used excessive force against him in violation of the Fourth Amendment and defendant City of Superior Police Department failed to adequately train and supervise Gothner in violation of plaintiff's Fourth Amendment rights. Before the court are four motions: plaintiff's motion for appointment of counsel, motion for a six month continuance of the case, motion to amend the complaint, dkt. #30, and "motion to amend," dkt. #31 (which I construe as a motion to supplement the complaint).

Plaintiff's motion for appointment of counsel will be denied without prejudice; at this

time, I see no reason why plaintiff is unable to prosecute this case on his own. Plaintiff's motion for a continuance will be denied because he has not offered a compelling reason for any delay in the proceedings, much less one as dramatic as he has requested. Plaintiff's motion to amend will be denied as futile. Finally, I will grant in part plaintiff's motion to supplement his complaint. He may add a claim for punitive damages; however, he may not pursue injunctive relief because there is none that may be awarded under the facts of this case.

A. Motion to Appoint Counsel

28 U.S.C. § 1915(e)(1) authorizes a court to appoint counsel for indigent litigants in civil cases. Because there are no funds available to reimburse counsel appointed under this section for their costs of representing the party, such appointments are made only when "exceptional circumstances" justify such an appointment. Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993) (quoting with approval Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)). The Court of Appeals for the Seventh Circuit will find such an appointment reasonable where the party's likely success on the merits would be substantially impaired by an inability to articulate his claims in light of the complexity of the legal issues involved. Id. In other words, the test is whether, given the difficulty of the case, the party requesting counsel appears to be competent to represent himself and, if not, whether the presence of

counsel would make a difference in the outcome of the case. Id.

Although plaintiff asserts that his case is complex, it is not. He has raised two claims: that defendant Gothner used potentially deadly force against him without provocation and that defendant City of Superior Police Department failed in its duty to train defendant Gothner in the proper use of deadly force. The claims are discrete and the relevant facts are, at least with respect to the claim against defendant Gothner, within plaintiff's personal knowledge. At this stage of the proceedings, I have no reason to believe that plaintiff is any less qualified to represent himself than any other pro se litigant.

B. Motion for a Six Month Continuance

Anticipating (incorrectly) that his motion for appointment of counsel would be granted, plaintiff has moved for a six month continuance to allow a lawyer to "study the complaint." Plaintiff asserts also that a continuance is appropriate because he has had difficulty getting discovery because of his recent incarceration.

In recent weeks, plaintiff has filed repeated motions asking for extensions of time within which to respond to discovery requests and meet additional deadlines. Each of those requests have been denied because plaintiff has offered no substantive reason why he should be excused from meeting his deadlines. Dkt. ## 39 & 40. His most recent motion suffers from the same defect. Because plaintiff has not provided a compelling reason why his case

should proceed more slowly than any other pro se case heard in this court, his motion for a continuance will be denied.

C. Motion to Amend

Rule 15(a) of the Federal Rules of Civil Procedure provides that “a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served” and that otherwise amendment is permissible “only by leave of court.” Whether to grant leave to amend a pleading pursuant to Rule 15(a) is within the discretion of the trial court, Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995), and “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Although leave to file an amended or supplemental complaint should be granted liberally, a request to amend may be denied on several grounds, including undue delay, undue prejudice to the party opposing the motion, or futility of the amendment. Butts v. Aurora Health Care, Inc., 387 F.3d 921, 925 (7th Cir. 2004); Chavez v. Illinois State Police, 251 F.3d 612, 632 (7th Cir. 2001).

In docket #30, plaintiff has moved to amend his complaint to add (1) demands for declaratory and injunctive relief; (2) a request for expungement (of what, he does not say); and (3) a claim against Joan Osty, clerk of the Circuit Court for Douglas County, Wisconsin. Plaintiff’s requests for expungement and for declaratory and injunctive relief are inappropriate in a case such as this one, where plaintiff contends that defendants committed

a wrong in the past that is not ongoing. He may seek compensatory damages but there is nothing to enjoin or expunge.

Moreover, plaintiff may not add Osty as a defendant to his case because he has not suggested what, if anything, she has done to merit being sued. In his proposed amendment, plaintiff appears to argue that Osty should be added as a defendant so that the court might order her to expunge plaintiff's records (by this, I assume plaintiff means the records of his criminal conviction, although he never says so). A person may be sued in a civil lawsuit under 42 U.S.C. § 1983 only when she has been personally involved in violating the constitutional rights of the plaintiff. Plaintiff has not alleged that Osty has violated his rights in any way. Therefore, she is not a proper defendant to his lawsuit.

Because each of plaintiff's proposed amendments would be futile, the motion to amend will be denied.

D. Motion to Supplement

In docket #31, plaintiff renews his request to add a demand for injunctive relief and asks to add a demand for punitive damages as well. As I explained above, injunctive relief cannot be awarded for violations that are not ongoing. Therefore, plaintiff's motion to supplement his complaint will be denied to the extent that he seeks to add a demand for injunctive relief.

However, if the jury finds at trial that defendants Gothner and City of Superior Police Department willfully violated plaintiff's rights by the manner in which Gothner used force and the manner in which the city trained its officers to use force, punitive damages might be appropriate. To the extent that plaintiff wishes to supplement his complaint to add a request for punitive relief, his motion will be granted.

ORDER

IT IS ORDERED that plaintiff's

1. Motion for a six month continuance is DENIED;
2. Motion for appointment of counsel is DENIED;
3. Motion to amend the complaint, dkt. #30, is DENIED; and
4. Motion to supplement the complaint, dkt. #31, is GRANTED in part and DENIED in part. Plaintiff's request for punitive damages will be deemed pleaded in his complaint. Plaintiff's request for injunctive relief will not be allowed.

Entered this 13th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge