

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

CHAUN S. BOULDEN,

Petitioner,

v.

PHIL WOODMAN (Owner) of
Woodman's (West); Employers
DENIS J. TROIA, DOUG GADLER,
BRIAN J. MANDT and RANDY HEBEL; and
WOODMAN'S SUPERMARKET WEST,

Respondents.

OPINION AND ORDER

07-C-447-C

This is a proposed civil action for monetary and injunctive relief, brought pursuant to 42 U.S.C. § 1983. Petitioner, who is presently confined at the Dane County jail in Madison, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, I must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, because petitioner is a prisoner, the

1996 Prison Litigation Reform Act requires that I deny leave to proceed if the action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Petitioner argues that local grocery store employees assaulted him and caused him injury. Although petitioner's allegations may be ones he could pursue in state court, he cannot proceed in forma pauperis in this court on his claim because it is not a federal law claim over which this court has jurisdiction.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner Chaun S. Boulden is an inmate presently confined at the Dane County jail in Madison, Wisconsin. Defendant Phil Woodman is owner of Woodman's Supermarket West. Defendant Denis J. Troia is an employee of Woodman's who works in the produce department. Defendant Doug G. Adler is a manager at Woodman's. Defendant Randy R. Hebel is an employee of Village Hearth. Defendant Brian J. Mandt is an employee of Woodman's who works as a meat cutter.

B. Assault

On April 25, 2007, petitioner was coming out of Woodman's Supermarket when he was asked where he was going by one of the employees. Petitioner said he was going to the bathroom, which is located near the store exit. Apparently the employee was seeking the return of some items, because petitioner told the employee that he could have the items back as he exited the store. After petitioner returned the items, one of the employees asked whether petitioner would come back into the store. Petitioner refused, stating he had already given the items back and he would not go back into the store. At this point, one of the employees grabbed petitioner's arm and started to pull him to the ground. Petitioner said "Don't touch me because you're hurting me." Within seconds, petitioner was pulled to the ground and one of the employees had a knee on petitioner's neck. Petitioner told the employees he couldn't breathe, but the employees did not let up. Petitioner then attempted to free himself, but one of the employees grabbed his hair and started to pull him into the entrance. When petitioner pulled away, respondent Mandt grabbed petitioner's throat and told him to come inside. Petitioner motioned that could not breathe, and someone else told Mandt to let petitioner go. Respondent Mandt released petitioner and petitioner ran to a vehicle to tell the person in the vehicle that he had been attacked. Petitioner asked the police whether he could make a report of the attack and get pictures. Petitioner was taken to jail and reported his injuries to the nurse, but the police officer did not make a report or take pictures.

DISCUSSION

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that he was deprived of a constitutional right and that a person acting under color of state law deprived him of such right. Gomez v. Toledo, 446 U.S. 635, 640 (1980). In his complaint petitioner contends that respondents are guilty of assault. However, nothing in his complaint allows an inference to be drawn that any one or more of the respondents is a state actor, that is, someone employed by or acting on behalf of the state of Wisconsin. Rather, respondents appear to be individuals whose actions cannot be interpreted as state actions. Thus, at most, petitioner's claim arises under state law claim, not federal law. Although federal courts may exercise supplemental jurisdiction over certain state law claims pursuant to 28 U.S.C. § 1367, this is true only when the lawsuit has a substantial federal claim and the facts of the federal claim overlap the facts of the state claim so that it makes sense to try them in one proceeding. Mine Workers v. Gibbs, 383 U.S. 715 (1966). Because petitioner has not stated a claim under federal law, I am not authorized to exercise jurisdiction over his state law claim. Petitioner remains free to pursue his assault claim in state court.

ORDER

IT IS ORDERED that

1. Petitioner Chaun S. Boulden is DENIED leave to proceed on his claim that respondents Phil Woodman, Denis J. Troia, Doug G. Adler, Brian J. Mandt, Randy R. Hebel,

and Woodman's Supermarket West assaulted him;

2. The unpaid balance of petitioner's filing fee is \$347.00; petitioner is obligated to pay this amount when he has the means to do so, as described in 28 U.S.C. § 1915(b)(2);

3. A strike will not be recorded against petitioner because I am declining to exercise supplemental jurisdiction over his state law claim; thus I did not dismiss the action for one of the reasons set forth in 28 U.S.C. § 1915(g); and

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

Entered this 11th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge