

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

CHARLES LAMONT NORWOOD,

Plaintiff,

v.

ORDER

3:07-cv-0624-bbc

CAPTAIN RADTKE, Correctional Officer at C.C.I.;
GREG GRAMS, Warden at C.C.I.;
AMY MILLARD, Complaint Examiner;
TOM GOZINSKE, Complaint Examiner;
AMY SMITH, Office of Secretary at Dept. of Corrections; and
Psychologist ANDREA NELSON,

Defendants.

Because he has struck out under 28 U.S.C. § 1915(g), plaintiff Charles Norwood may not proceed in forma pauperis in any action in this or any other federal court unless he alleges in his complaint that he is in imminent danger of serious physical injury. In this case, plaintiff was allowed to proceed on claims that the defendants are deliberately ignoring a serious risk to his physical safety because they refuse to allow him to be placed in “pair with care” status and because they intend to award him a step increase that will force him to associate with threatening inmates in the day room.

Plaintiff’s complaint has been served on defendants under this court’s informal service

agreement with the Attorney General. Defendants have not yet answered the complaint. Now, however, plaintiff has filed a “Motion to Amend Complaint.” In addition, he has filed a document titled “Notice,” in which he lists the relief he is seeking in this case. Because the notice simply repeats the relief plaintiff already is requesting in his complaint, it will be placed in the court’s file, but no consideration will be given to it.

With respect to plaintiff’s motion to amend his complaint, I must deny the motion for two reasons. First, plaintiff’s motion to amend is not accompanied by a proposed amended complaint. Instead, plaintiff simply describes the various changes he would like to make to his complaint. Because the defendants in a lawsuit are required to file an answer to amended pleadings as well as the original complaint, a proposed amended complaint is to be submitted in a specific format. Plaintiff must name in the caption each person he wants to sue and describe in the body of the complaint what each defendant did or did not do, when they did or did not do it, and what he wants the court to do about it. It must be clear to defendants and to the court what plaintiff is saying each defendant did so that each can answer plaintiff’s particular grievance against him or her.

Moreover, to help the court and defendants understand what changes a plaintiff is making in an amended complaint, it is this court’s policy to ask the plaintiff to file a proposed amended complaint that looks just like the original except that plaintiff is to point out any new defendants by highlighting their names in the caption and he is to highlight all

the new or modified allegations he has made to the body of the complaint or to his request for relief. If plaintiff wants to delete certain allegations from the original complaint, he should draw a line through those allegations in his proposed amended complaint. If plaintiff does these things, it will allow the court to screen plaintiff's changes quickly and rule more promptly on his motion.

Second, even if plaintiff had submitted a proposed amended complaint in the format discussed above, I would not grant his motion at this time. Plaintiff's only purpose in amending his complaint is to add seven more people as defendants in this lawsuit. According to plaintiff, each of the proposed new defendants is ignoring his pleas for "pair with care" status and his concerns about being admitted to the day room. In other words, plaintiff is casting his net over a widening circle of individuals who are rejecting his pleas for the housing arrangements and cell assignments he alleges are necessary to his safety.

In the ordinary case, I might grant a motion to amend of this type (assuming the plaintiff had filed a proposed amended complaint). But this is not an ordinary case. It is a case that, despite plaintiff's history of frivolous litigation, he is prosecuting under the in forma pauperis statute for one reason only: he has alleged facts sufficient to suggest that the defendants already named are failing to protect him against a danger that is both "real and proximate." Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002). Suits alleging real and proximate danger require swift resolution, and the amendment plaintiff proposes to make

would result in unnecessary delay. It would take several weeks for plaintiff to rewrite and resubmit his proposed amended complaint, for the court to enter a screening order, for any new defendants allowed to be served and for the new defendants to answer.

Because this is a case alleging imminent danger of serious physical injury, it is my intention to move it forward on a fast track. As soon as the defendants already named in this lawsuit file their answer to plaintiff's original complaint, I intend to schedule an evidentiary hearing at which plaintiff will have a chance to show that he has a reasonable probability of proving at trial his claim that he faces an immediate threat of serious physical injury. At this particular time, plaintiff should be considering what testimony he will give and gathering whatever documentary evidence he has to support his claim.

Given the importance of this issue to the future prosecution of this case, defendants should be prepared to produce witnesses or documentary evidence sufficient to allow the court to make an informed decision. If plaintiff succeeds in making the showing necessary for emergency injunctive relief, I will enter an order granting such relief. After that, plaintiff will be free to amend his complaint if he wishes, to add parties who were personally involved in violating his constitutional rights and would be liable to him for money damages. If, however, plaintiff fails to show that he is in imminent danger of serious physical injury, I will consider that he has misused the imminent danger exception to § 1915(g) and I will revoke his permission to proceed in forma pauperis. In that event, plaintiff's case will be dismissed

unless he pays the \$350 filing fee.

ORDER

IT IS ORDERED that plaintiff's motion to amend his complaint is DENIED without prejudice.

Further, IT IS ORDERED that as soon as defendants have answered the complaint, the clerk of court is to schedule an evidentiary hearing to be held as soon as the court's calendar permits at which the parties are to address plaintiff's claim that he is in imminent danger of serious physical injury.

Entered this 6th day of December, 2007.

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