

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

ANDREW PHILLIPS,

Plaintiff,

v.

DR. CHARLES LARSON, BELINDA SCHRUBBE
and SERGEANT LEHMAN,

Defendants.

ORDER

08-cv-362-bbc

In this action for monetary relief brought under 42 U.S.C. § 1983, plaintiff Andrew Phillips, a prisoner currently housed at the Oakhill Correctional Institution, contended that defendants Dr. Charles Larson, Belinda Schrubbe and Sergeant Lehman violated his Eighth Amendment rights by failing to provide adequate medical care for his severe back and leg pain. In a December 18, 2008 order, I granted plaintiff's motion to dismiss the case without prejudice because he did not want to proceed without counsel.

Now plaintiff has filed a motion stating that he has still not found counsel but that he would like to reopen the case because the statute of limitations on his claims is running out. However, this is not a reason to vacate the judgment over four years later and reopen the case. Accordingly, I will deny the motion to reopen. Plaintiff remains free to bring his claims in a new case, and in his motion he seems to say that he would accept refiling his original complaint as long as the court sent him a copy of his complaint and billed him for

the expense. Therefore, I will direct the clerk of court to open plaintiff's complaint in this action under a new case number, no. 13-cv-29-bbc.

However, the case cannot proceed until plaintiff either pays the full \$350 filing fee for this new case or applies for leave to proceed in forma pauperis, which he can do by submitting a six-month trust fund account statement for the period beginning approximately July 15, 2012 and ending January 13, 2013. If plaintiff is allowed to proceed in forma pauperis, the amount he will owe for a copy of his complaint is \$1.20. If he does not proceed in forma pauperis, he will have to pay 50 cents a page for copies, for a total of \$6.00 for the complaint. The cost of these copies is payable to the clerk of court.

ORDER

IT IS ORDERED that:

1. Plaintiff Andrew Phillips's motion to reopen this case, dkt. #46, is DENIED.
2. The clerk of court is directed to open plaintiff's complaint in this action under a new case number, no. 13-cv-29-bbc.
3. Plaintiff may have until February 6, 2013, in which to submit the full \$350 filing fee for this case or submit a certified copy of his trust fund account statement for the period beginning approximately July 15, 2012 and ending approximately January 15, 2013. If plaintiff fails to respond by this deadline, I will assume that he wishes to withdraw this action voluntarily. In that event, the clerk of court is directed to close this case without

prejudice to plaintiff's filing his case at a later date.

Entered this 18th day of January, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge