

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

LAMONT E. MOORE,

Plaintiff,

v.

DR. GLEN HEINZL,

Defendant.

ORDER

10-cv-390-bbc

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. In an order dated August 12, 2010, I granted plaintiff Lamont Moore leave to proceed on his claim that defendant Dr. Glen Heinzl violated his rights under the Eighth Amendment by failing to diagnose and treat plaintiff's Lyme disease. Plaintiff also contends that defendant's actions constitute medical negligence under Wisconsin law. However, I stayed a decision whether plaintiff could proceed on his medical negligence claim because he did not state whether he had filed a notice of claim with the Wisconsin attorney general that had been disallowed, as required by Wis. Stat. § 893.82(3m). Plaintiff has submitted a supplement to his complaint, in which he alleges that he filed a notice of claim on February 9, 2010.

Because more than 120 days have passed since plaintiff filed the notice of claim, he has satisfied the requirements under Wisconsin law. Thus, I may now screen plaintiff's medical negligence claim pursuant to 28 U.S.C. § 1915A. After doing so, I conclude that plaintiff may proceed on his medical negligence claim against defendant.

DISCUSSION

Federal courts may exercise supplemental jurisdiction over a state law claim that is “so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Plaintiff Lamont Moore’s medical malpractice claim against defendant Dr. Heinzl is part of the same case or controversy as his federal claim. (For a full account of the facts in plaintiff’s complaint, see the August 12, 2010 Order, *dk. #7*).

To prevail ultimately on a claim for medical malpractice in Wisconsin, plaintiff must prove that defendant breached his duty of care and plaintiff suffered injury as a result. Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 520, 625 N.W.2d 860, 865. In his complaint, plaintiff alleges that while he was incarcerated at the New Lisbon Correctional Institution in New Lisbon, Wisconsin, he complained to defendant about eye problems and pain. Defendant ordered a blood test that was positive for a blood disease. However, defendant did not attempt to determine the nature of the disease; instead, he made a

diagnosis of glaucoma and sent plaintiff to the hospital for treatment. Plaintiff received treatment for glaucoma for four years, including multiple surgeries, but he continued to experience pain and other physical problems. As it turns out, plaintiff did not have glaucoma; rather, he had Lyme disease, which was diagnosed by another prison doctor four years later. Plaintiff contends that if defendant had tested his blood properly, he could have diagnosed plaintiff's Lyme disease and he could have received immediate treatment. Instead, plaintiff suffered for four years and has permanent injuries.

At this stage, it is possible to infer that defendant's failure to properly diagnose and treat plaintiff's Lyme disease may have been negligent. Therefore, plaintiff may proceed on his state medical negligence claim.

ORDER

IT IS ORDERED that

1. Plaintiff Lamont Moore is GRANTED leave to proceed on his claims that defendant Dr. Glen Heinzl violated his rights under the Eight Amendment and committed medical negligence by failing to provide him with adequate medical care.

2. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint, supplement to his complaint, the August 12, 2010 order, dkt. #7, and this order are being sent today to the Attorney General

for service on the state defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint for the defendants on whose behalf it accepts service.

3. For the remainder of this lawsuit, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the Waupun Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 26th day of August, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge