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

CHRISTOPHER M. SANDERS,

Plaintiff,

v.

JEFF PUGH and DR. SEARS,

Defendants.

OPINION AND ORDER

11-cv-202-slc

Before the court in this civil rights case brought under 28 U.S.C. § 1983 are several motions filed by pro se plaintiff Christopher M. Sanders, a former inmate at the Stanley Correctional Institution (SCI), where defendants Jeff Pugh and Dr. Sears were employed. Sanders has made his fourth request for appointment of counsel (dkt. 54), a renewed request for court assistance in obtaining evidence and making legal arguments (dkt. 59), moved for reconsideration of this court's denial of his motions to compel and request for injunctive relief (dkt. 60), moved for leave to amend his complaint to add additional claims and defendants (dkt. 68) and requested a change in venue or a new judge (dkt. 68). For the reasons stated below, I am denying all of these motions.

I. Appointment of Counsel

In his fourth request for the appointment of counsel, Sanders argues that he needs help with opposing defendants' motion for summary judgment motion because he cannot look up case law, formulate arguments in support of his claims or obtain witness evidence that has been denied to him by the Attorney General's Office and this court. He also states that he needs help filing charges of perjury and conspiracy against the Department of Justice, Department of Corrections and SCI.

In deciding whether to appoint counsel, I must consider both the complexity of the case and Sanders's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007).

Sanders has submitted no new information that persuades the court to change its September 14, 2011 decision to deny his third motion for appointment of counsel. There is nothing in the record to suggest that this case is factually or legally difficult. The law on Eighth Amendment medical care claims and First Amendment retaliation claims is well-established and was explained to Sanders in the order granting him leave to proceed. Although Sanders may lack legal knowledge and have limited access to legal resources, his case depends largely on the facts surrounding his claims, many of which he should know personally. This court will apply the appropriate law to these facts, even if Sanders cannot provide the law on his own or does not understand how the law applies to his facts.

A review of Sanders's filings in response to the summary judgment motion show that the documents are clear and appropriately directed. Sanders was able to file a response brief, respond to defendants' proposed findings of fact, support those findings with evidence and submitted factual findings of his own to support his claims. In sum, Sanders's limited knowledge of the law and lack of access to legal materials are not circumstances warranting appointment of counsel.

Further, as previously explained to Sanders, bald proclamations that the AAG or other state agencies defending this case are lying or otherwise acting unethically does not demonstrate a need for appointment of counsel. From Sanders's submissions in response to summary judgment, it appears that he believes that the AAG's office has knowingly relied on false and misleading facts. However, there is no evidence that the AAG has committed perjury or is part of a conspiracy to do so. If Sanders disagrees with the facts proposed by defendants or considers them lies, he should refute them with facts of his own, supported by admissible evidence. It appears that he has done so. Accordingly, Sanders's fourth motion for appointment of counsel will be denied.

II. Motion for Reconsideration

Sanders has moved for reconsideration of three orders entered by this court in his case: a September 15, 2011 order denying his motion to compel the names and DOC numbers of the inmates housed in his former unit at SCI; an October 26, 2011 order denying his motion for partial summary judgment on his claim for injunctive relief; and a December 2, 2011 order denying in part his motion to compel all past inmate complaints and lawsuits filed against defendants.

Sanders previously filed a motion for reconsideration, which I denied on September 28, 2011. *See* dkts. 30 and 34. This second motion for reconsideration of that order fails to provide any new arguments or evidence suggesting that I erred in finding that the identities of the other inmates is his former housing unit at SCI were unnecessary to the resolution of this case. Similarly, Sanders fails to offer persuasive argument or evidence in support of his motion for reconsideration of the court's October and December 2011 orders.

On October 26, 2011, I declined to enjoin SCI's policy of requiring inmates to place a written request for medical assistance in the "medical box," which the medical staff receives via internal mail, signs and then returns a carbon copy to the inmate. Dkt. 38. Sanders renews his argument that when the staff chooses not to sign and return the form, the inmate does not receive medical help. However, as I explained in the previous order, Sanders cannot obtain an injunction against SCI because Sanders no longer is incarcerated at SCI. Unless a former inmate can show a realistic possibility that he will be incarcerated again in the same state facility and therefore be subject to the actions of which he complains, then any relief that the court's judgment might permit would be purely speculative in nature. *Maddox v. Love*, 655 F.3d 709, 716 (7th Cir. 2011).

On December 2, 2011, I granted Sanders's motion to compel past inmate complaints and lawsuits filed against defendants to the extent that the complaints or lawsuits resulted in a finding that either defendant was deliberately indifferent to an inmate's serious medical need or that Dr. Sears retaliated against an inmate for filing a complaint against him. Dkt. 43. However, I concluded that mere accusations of deliberate indifference or retaliation, without more, prove nothing and were not discoverable. Sanders now argues that even unsuccessful inmate complaints against Dr. Sears would show that he is abusive. As explained in the December order, however, the fact that an inmate filed a complaint against Dr. Sears does not mean that Dr. Sears was abusive. Only those cases resulting in a finding or judgment against Dr. Sears would be evidence of his state of mind or misconduct.

Because Sanders has not shown that I erred with respect to any of the above issues, I am denying his motion for reconsideration.

III. Requests for Court Assistance

Sanders has filed a general request for court assistance, asking for help with obtaining necessary evidence to oppose summary judgment; discovering whether Dr. Sears still is employed at SCI; obtaining internal communications between the ICE, the warden and the prison dental staff concerning his dental issues; the appointment of an expert witness for him; obtaining copies of the health and dental services requests he submitted while at SCI; getting his records from his private dentist and surgeon; responding to the summary judgment motion; obtaining the names of inmates who witnessed his "tortures" on Unit 3-C; and obtaining access to legal resources. Sanders raised most of these issues in a previous motion for court assistance, motions to compel and motions for appointment of counsel. *See* dkt. 20 (names of fellow inmates on Unit 3-C), dkt. 21 (appoint counsel to help with discovery and litigation), dkt. 25 (injunctive relief concerning health service request procedure), dkt. 41 (requesting records from private dentist

and expert witness), dkt. 54 (motion to appoint counsel to help with summary judgment). I denied those requests for the reasons explained in my previous orders, which I will not repeat here.

With respect to the new issues, defendants respond that Sanders has not made a discovery request for information about Dr. Sears's employment status or the internal communications between the ICE, the warden and the prison dental staff. Dkt. 65. They also indicate that they already have produced the copies of the health and dental services request forms that they have for Sanders. These responses suffice. Sanders's request for court assistance will be denied.

IV. Amend Complaint and Change Venue or Judge

Sanders asks for leave to amend his complaint to request "additional damages and defendants." Dkt. 68. In particular, he wishes to sue the Attorney General's Office for "bad faith" and the Clerk of Court for the Western District of Wisconsin for "delaying, hindering, or denying" his documents "while plaintiff has been unable to get the prejudiced court to help." *Id.* As a result, he claims he needs a change of venue or at least a new judge because the new claims will present a "conflict of interest." *Id*.

At this late stage in the lawsuit, Sanders may amend his complaint only with defendants' consent or permission from the court. Fed. R. Civ. P. 15(a)(2). Although Rule 15(a)(2) states that a court should freely grant a party leave to amend its pleadings "when justice so requires," a request to amend maybe denied on several grounds, including undue delay, undue prejudice to the party opposing the motion or futility of the amendment. *Sound of Music v. Minnesota Mining and Manufacturing Co.*,477 F.3d 910, 922-23 (7th Cir. 2007). Sanders's motion will be denied.

Sanders's motion to amend was received on March 14, 2012, a month after defendants had filed their motion for summary judgment. Adding new defendants and claims at this point would unduly delay the progress of this case and be unduly prejudicial to defendants. *See Cleveland v. Porca Co.*, 38 F.3d 289, 297 (7th Cir.1994) (finding no abuse of discretion in denying motion to amend complaint where motion was filed after discovery was completed, motions for summary judgment were fully briefed, and witness and exhibit lists were already submitted); *Kleinhans v. Lisle Savings Profit Sharing Trust*, 810 F.2d 618, 625 (7th Cir.1987) (finding no abuse of discretion in denying motion to amend complaint when motion was filed after discovery was completed and after defendant had moved for summary judgment, without adequate explanation for the delay, in "an apparent attempt to avoid the effect of summary judgment"); *Murphy v. White Hen Pantry Co.*, 691 F.2d 350, 353 (7th Cir.1982) (finding no abuse of discretion in denying motion to amend complaint where motion was filed after discovery was completed and sought to inject a new theory of recovery into the litigation).

Moreover, the main motivation for Sanders's motion to amend appears to be his desire to add a claim that defendants have litigated this case in bad faith by "knowingly" using false information, manipulating the record, committing perjury and taking advantage of his poverty by wearing him out. Sanders also accuses the clerk of court of hindering the prosecution of his case by failing to file his documents. These allegations do not require amending the complaint. Sanders offers no evidence that he has been precluded from pursuing this lawsuit. As explained above, to the extent that Sanders is trying to prove that defendants lied about what happened, he can raise those issues at summary judgment or trial.

Sanders also fails to explain how the clerk of court prevented the filing of any documents. I note that in a letter dated March 6, 2012 and received by the court on March 8, Sanders states that his proposed findings of fact were not docketed along with the rest of his opposition to the summary judgment motion. Dkt. 64. However, the docket sheet in this case shows that a copy

of that document was received and docketed on both March 6 and March 8. In addition, defendants have responded to Sanders's proposed findings of fact and they will be considered by the court in ruling on summary judgment.

In his motion, Sanders appears to be arguing that this court is biased against him. Given his requests for a change in venue or a new judge, I will construe his motion as both a motion to withdraw his consent to my jurisdiction and as a motion to recuse or disqualify myself.

Once a party consents to the jurisdiction of a magistrate judge in his lawsuit, the consent cannot be withdrawn absent extraordinary circumstances. 28 U.S.C. § 636(c)(4). *See Lorenz v. Valley Forge, Ins. Co.*, 815 F. 2d 1095, 1097 (7th Cir. 1987); *Geras v. LaFayette Display Fixtures, Inc.*, 742 F. 2d 1037, 1038 (7th Cir. 1984). If the parties in a consent case could change their decision just because they didn't like a magistrate judge's ruling on a particular motion, then consent would be withdrawn in almost every case and consent jurisdiction would be a pointless exercise. The fact that I have not ruled on Sanders's pretrial motions the way he wants is not an extraordinary circumstance. Therefore, he cannot withdraw his consent to my jurisdiction.

Although this will be no consolation to Sanders, magistrate judges have the power to rule on motions to appoint counsel and motions to compel discovery in every case, even if the case is assigned to a district judge. That's the way the judges have divided up the responsibilities in this court. So, even if Sanders had never consented to my jurisdiction, I would have entered the same orders denying his motions.

Next, 28 U.S.C. §§144 and 455 apply to motions for recusal and disqualification of judges. Section 144 requires a federal judge to recuse himself for "personal bias or prejudice." Section 455(a) requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned," and section 455(b)(1) provides that a judge shall disqualify himself if he "has a personal bias or prejudice concerning a party." Because the phrase "personal bias or prejudice" found in §144 mirrors the language of § 455(b), they may be

considered together. *Brokaw v. Mercer County*, 235 F.3d 1000, 1025 (7th Cir. 2000). In deciding whether a judge must disqualify himself under § 455(b)(1), the question is whether a reasonable person would be convinced the judge was biased. *Hook v. McDade*, 89 F.3d 350, 355 (7th Cir. 1996) (internal quotation omitted). Recusal under § 455(b)(1) "is required only if actual bias or prejudice is proved by compelling evidence." *Id.* (citation and quotation omitted).

I am not biased or prejudiced against Sanders. I have provided Sanders and his submissions the same impartial consideration that I provide to every litigant in this court. Sanders's only suggestions of prejudice are that he disagrees with my rulings on his motions, he believes that I have ignored his attempts to report misconduct by the Attorney General's Office and he believes that this court has delayed docketing his filings. None of these, considered alone or together, establishes bias or prejudice in this case. *Liteky v. United States*, 510 U.S. 540 (1994). Therefore, I am denying Sanders's motion for my recusal or disqualification. As I have tried to make clear to Sanders, and as I try to make clear to every pro se plaintiff, denial any motion is never personal and it is never based on bias against a particular plaintiff or toward a particular defendant or AAG.

ORDER

IT IS ORDERED that plaintiff Christopher Sanders's motion for appointment of counsel (dkt. 54), requests for court assistance in obtaining evidence and making legal arguments (dkt. 59), motion for reconsideration (dkt. 60) and motion for leave to amend his complaint and a change in venue or a new judge (dkt. 68) all are DENIED.

Entered this 6th day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge