

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

JEFFREY D. LEISER,

Plaintiff,

ORDER

v.

BELINDA SCHRUBBE, R.N., DR. CHARLES
LARSON, M.D., DR. DEBBE LEMKE, M.D.,
DR. PAUL SUMNICH, M.D., CYNTHIA
THORPE, Nursing Coordinator, MARK
JENSEN, R.N., SANDY JACKSON, R.N.,
CAPTAIN CORE, SERGEANT VANDER-GALON,
SR., SERGEANT BRISTOL, OFFICER GEASE and
John and Jane Does,

11-cv-254-slc

Defendants.

This court has granted plaintiff Jeffrey D. Leiser's leave to proceed on his civil complaint as to his Eighth Amendment deliberate indifference claim against defendants Charles Larson, Debbe Lemke, Paul Sumnicht, Mark Jensen, Sandy Jackson, Belinda Schrubbe, Sargent Vander Galon, Sr. and Sergeant Bristol. The court denied leave to proceed on plaintiff's claims against defendants Cynthia Thorpe, Captain Core, Officer Gease and John and Jane Does. Plaintiff has moved for reconsideration of the denial of his request to proceed against Cynthia Thorpe, Officer Gease and John and Jane Does.

Plaintiff now alleges that defendant Cynthia Thorpe knew that defendants were violating his constitutional right to medical treatment but failed to remedy this violation. This allegation supports the inference that defendant Thorpe had the ability to intervene and failed to do so. According to *Fillmore v. Page*, 358 F.3d 496, 505-06 (7th Cir. 2004), this allegation is sufficient to support a claim of deliberate indifference against defendant Thorpe. Therefore, plaintiff will be allowed to proceed against defendant Cynthia Thorpe.

Plaintiff now alleges that defendant Gease not only took away plaintiff's special permission slips for approved special needs, but also removed plaintiff's extra mattress, extra pillows, tens unit, and ice bags. Plaintiff alleges that he was severely injured and defendant Gease failed to allow him these treatment needs. These new allegations suffice to allow plaintiff to proceed against defendant Gease.

As to the John and Jane Doe defendants, plaintiff now alleges that nurse James Greer and Dr. Burnett denied his request to be taken to UW Madison Hospital to be seen by a neurosurgeon. This is a new allegation that was not included in his original complaint, not even against any Doe defendants. If plaintiff wishes to proceed on these allegations against these newly named defendants, then plaintiff must file a proposed amended complaint that adds this claim and these defendants to the allegations to his original complaint.

In conclusion, defendant's motion for reconsideration will be granted as to defendants Cynthia Thorpe and Officer Gease. It will be denied as to the Jane and John Doe defendants. However, plaintiff may submit a proposed amended complaint including a claim against these defendants.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration is GRANTED in part and DENIED in part as described herein.

Entered this 17th day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge