

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

JEFFREY E. OLSEN,

Plaintiff,

v.

CAPTAIN DONALD MORGAN,
SERGEANT SCHNIEDER
and DR. TENEBRUSCO,

Defendants.

ORDER

11-cv-282-slc¹

In this civil action for monetary and injunctive relief, plaintiff Jeffrey Olsen contends that several defendants at the Columbia Correctional Institution, located in Portage, Wisconsin, have violated his constitutional rights. On May 18, 2011, I granted plaintiff leave to proceed on his claims that defendants Donald Morgan and Sergeant Schnieder violated his rights under the Eighth Amendment by failing to protect him from an attack by another inmate. Dkt. #8. Also, I granted him leave to proceed on his claim that Schnieder filed conduct reports against plaintiff in retaliation for plaintiff's complaints about

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

Schnieder's failure to protect him. I denied plaintiff leave to proceed on his claims that defendants Tim Douma and Janel Nickel violated his constitutional rights by rejecting his complaints related to the inmate attack, that defendant Dr. Tenebrusco violated his rights by failing to provide him medical treatment and that prison staff violated his right of access to the courts by denying him legal loans. I dismissed his complaint as to defendants Douma, Nickel and Tenebrusco. However, because plaintiff had pleaded enough facts to suggest that he might have a valid claim for violation of his Eighth Amendment right to medical care, I gave him an opportunity to supplement his complaint with respect to his claim regarding denial of medical treatment.

Now before the court is plaintiff's motion to supplement his complaint with information about his medical care claim. Dkt. #11. In addition, plaintiff has filed several motions in which he seeks to amend his complaint to add new and previously dismissed defendants and claims. Dkt. ##11-14.

I will grant plaintiff's motion to supplement his complaint with information about his medical care claim and will grant him leave to proceed on his claim that defendant Tenebrusco violated his rights under the Eighth Amendment by failing to provide him adequate medical treatment. I will deny the remaining motions.

DISCUSSION

A. Plaintiff's Claim against Defendant Tenebrusco

As I explained in the May 18 order, to state a claim for violation of his Eighth Amendment rights to medical care, plaintiff must plead sufficient facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. Estelle v. Gamble, 429 U.S. 97, 104 (1976); Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997). In his original complaint, plaintiff alleged that he filed numerous requests for medical treatment after he was attacked by another inmate, but besides the initial examination by the nurse, he received no medical or dental care or pain medication for the injuries resulting from the attack. In addition, he alleged that his injuries caused him serious pain and made it impossible for him to eat. Plaintiff’s allegations implied that he had a serious medical need, but he had failed to allege that defendant Tenebrusco or any other defendant was aware of the need and failed to take reasonable steps to treat it.

In his supplement, plaintiff alleges that he notified defendant Tenebrusco on several occasions that his injuries caused severe pain, that he had not eaten for days and that he was spitting up blood, but that Tenebrusco refused to provide plaintiff any treatment for at least three weeks. These allegations imply that Tenebrusco was deliberately indifferent to plaintiff’s serious medical needs. Thus, plaintiff may proceed on his claim that defendant Tenebrusco failed to provide plaintiff adequate medical treatment for the injuries caused by

the other inmate's attack.

B. Motion for Reconsideration of the Dismissal of Defendants Douma, Nickel and Plaintiff's Access to the Courts Claim

Although I instructed plaintiff to submit additional allegations regarding his medical care claim only, plaintiff attempts to revive the dismissed claims against defendants Douma, Nickel and the Wisconsin Department of Corrections in his May 26 supplement. I understand plaintiff's allegations and arguments to be a motion for reconsideration of the dismissal of these claims.

In the May 18 order, I dismissed plaintiff's claims against defendants Douma and Nickel because he alleged only that they rejected his inmate complaint regarding defendant Schnieder. He did not allege that either Douma or Nickel was ever aware that plaintiff was at risk of harm before he was attacked and he did not allege that he was still at risk of harm or that Douma and Nickel could act to protect him.

Plaintiff's supplement does not alter my conclusion that his claims against defendants Douma and Nickel lack merit. In the supplement, he alleges that Douma and Nickel have conspired to deprive plaintiff of his constitutional rights and to cover up the misconduct of defendants Morgan and Schnieder. However, as evidence of the alleged conspiracy, plaintiff points only to Nickel's approval of plaintiff's transfer to the Wisconsin Secure Program

Facility. Plaintiff does not explain why Nickel and Douma would be motivated to cover up Schnieder's behavior and, more important, how transferring him to a new facility would cover up Schnieder's actions. In sum, plaintiff's new allegations do not permit an inference that defendants Douma or Nickel caused or contributed to any constitutional violations.

With respect to plaintiff's access to the courts claim, plaintiff alleges that he has been denied legal loans and cannot afford to litigate his cases. However, as I pointed out to plaintiff in the May 18 order, he cannot state a claim for denial of access to the courts unless he alleges that he has suffered actual prejudice in his ongoing court proceedings. *Christopher v. Harbury*, 536 U.S. 403, 415 (2002) (claim for denial of access to courts requires plaintiff to show that he had non-frivolous underlying cause of action that has been lost or impeded). Plaintiff alleges no such facts. Moreover, even if plaintiff did state a claim for access to the courts, the claim could not proceed on this lawsuit because the claim is unrelated to the claims and defendants in the present lawsuit.

Under Fed. R. Civ. P. 20(a)(2), a plaintiff is prohibited from asserting unrelated claims against different defendants or sets of defendants in the same lawsuit. The rule prohibits a plaintiff from joining many defendants in a single action unless the plaintiff asserts at least one claim to relief against each defendant that both arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). In other

words, the plaintiff may assert claims against more than one defendant if he asserts that all of the defendants were involved in the same alleged wrongdoing.

Although Fed. R. Civ. P. 18 allows a party to join unrelated claims against defendants in a suit, this rule applies only after the requirements for joinder of parties have been satisfied under Rule 20, *Intercon Research Assn., Ltd. v. Dresser Ind., Inc.*, 696 F.2d 53, 57 (7th Cir. 1983) (citing 7 Charles Alan Wright et al., *Federal Practice & Procedure*), which means that the court must determine one central group of allowable defendants under Rule 20 before allowing a plaintiff to join additional unrelated claims against one or more of those defendants under Rule 18. This means also that under Rule 18, a party cannot join claims involving any defendant outside the group identified under Rule 20.

As the basis for his access to the courts claim, plaintiff alleges that employees in the Department of Corrections' business office have denied his requests for a legal loan. These employees are not defendants in the present case and their actions are not related to the facts of this case. Thus, even if plaintiff's complaint stated a claim for denial of access to the courts, Rule 20 would prohibit plaintiff from asserting the claim within this lawsuit.

Accordingly, I will deny plaintiff's motion for reconsideration.

C. Additional Supplements and Motions

Since May 27, plaintiff has filed three supplements or motions to amend his

complaint in which he seeks to add several new defendants and claims to this case. Dkt. ##12–14. This is not the procedure he should be following. In this court, when a plaintiff wishes to amend his complaint, he must file a completely new complaint that will replace the original complaint. As a general rule, it is inappropriate for a plaintiff to file an original complaint, and then add a communication later that makes one change, and another communication a week later making another change, and another a week later making yet another change. A complaint cannot be a moving target. At some point, it has to be finished so that the court may understand the plaintiff's claims and so defendants know precisely what it is that they are being charged with doing and what the plaintiff wants as relief.

Moreover, plaintiff's proposed supplements and amendments raise issues completely unrelated to the claims on which he is proceeding in this case. They involve new defendants and events at a different prison. As explained above, under Rule 20 plaintiff would not be allowed to proceed with those claims in the context of this case. Therefore, I am denying plaintiff's motions to amend his complaint without further discussion. If plaintiff wishes to raise these additional claims, he must file a new lawsuit.

ORDER

IT IS ORDERED that

1. Plaintiff Jeffrey E. Olsen is GRANTED leave to proceed on the following claims:

a. defendants Donald Morgan and Sergeant Schnieder violated plaintiff's rights under the Eighth Amendment by failing to protect him from an attack by another inmate;

b. defendant Schnieder violated plaintiff's rights under the First Amendment by filing conduct reports against plaintiff in retaliation for plaintiff's complaints about Schnieder's failure to protect him; and

c. defendant Tenebrusco violated his rights under the Eighth Amendment by failing to provide him medical treatment.

2. Plaintiff's motion for reconsideration of the dismissal of plaintiff's claim for denial of access to the courts and his claims against defendants Tim Douma and Donald Morgan, dkt. #11, is DENIED.

3. Plaintiff's motions to supplement and amend his complaint, dkt. ##12, 13, and 14, are DENIED.

4. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants. 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 if it accepts service on behalf of the state defendants.

5. For the time being, plaintiff must send defendants a copy of every paper or

document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

6. 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.

Entered this 15th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge