IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

LOREN L. LEISER, SR.,

OPINION AND ORDER

Plaintiff,

11-cv-328-slc

v.

JEANNIE ANN VOEKS, R.N., DR. BRIAN J. BOHLMANN,
DR. KENNETH ADLER, DR. BRUCE GERLINGER,
DR. BRAUNSTEIN, DR. JOAN M. HANNULA,
DAVE ROCK, Nurse Practitioner, DR. BURNETT,
REED RICHARDSON, former SCI Security Chief,
PAMELA WALLACE, former SCI Warden,
BRADLEY HOMPE, former SCI Warden,
JEFFREY PUGH, current SCI Warden.
JOHN/JANE DOE(S) "SPECIAL NEEDS COMMITTEE" MEMBERS,
JOHN/JANE DOES(S) "COMMITTEE" APPROVING SURGICAL PROCEDURES,
JAMES GREER, R.N. and
WISCONSIN HEALTH CARE LIABILITY INSURANCE PLAN,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

Pro se plaintiff Loren Leiser has filed a “motion for reconsideration” in response to this court’s order dated July 22, 2011. In that order, I allowed plaintiff to proceed on various claims under the Eighth Amendment related to medical care for his knees. I dismissed other claims for plaintiff’s failure to state a claim upon which relief may be

granted. With respect to plaintiff's four remaining claims, I concluded that they did not belong in the same lawsuit because they were not sufficiently related to the other claims:

(a) defendant Dave Rock refused to comply with a doctor's order to give plaintiff physical therapy for his shoulder;

(b) defendant Hannula is refusing to treat pain in both of plaintiff's feet, by conducting tests, prescribing special shoes for him or prescribing adequate pain medication;

(c) defendants Voeks and Richardson required him to wear "hard cuffs" instead of "soft cuffs" during transport; and

(d) defendant Brian Bohlmann sexually assaulted him during a medical exam and defendants Dr. Burnett, Pamela Wallace, James Greer, Brad Hompe and Jeffrey Pugh knew that Bohlmann was a danger to prisoners but failed to take reasonable measures to protect them.

I gave plaintiff an opportunity to decide whether to open new lawsuits raising any of these claims or to dismiss them without prejudice to his refiling them at a later date.

Most of plaintiff's 14-page motion is nonresponsive to the order. Instead, he focuses on what he views as the strong merits of these other claims. However, my decision to sever the case had nothing to do with the strength or weakness of the claims. In fact, I did not even consider whether plaintiff stated a claim upon which relief may be granted with respect to those claims. Instead, I concluded that severance was appropriate in light of the large number of claims (no fewer than 11) and defendants (nine, not counting John Does) already included in plaintiff's claims related to his knees and the lack of any significant factual

overlap between the knee-related claims and the other claims. In his motion, plaintiff fails to show that trying all of these claims together would be an efficient use of judicial resources. It would be particularly inappropriate to join plaintiff's sexual assault claim against defendant Bohlmann with the other claims in light of the significant prejudice such allegations would have on the other defendants at trial.

Plaintiff's other arguments are unpersuasive as well. For example, he says that if he cannot try all of his claims together, his "case is sever[e]ly weaken[ed] in both [his] demonstration to the jury and [his] position in negotiating a fair settlement with the State's attorney or the defendants[']] Malpractice insurance companies, or to barter for treatment, . . . or to stop defendants from hurting me anymore." Plt.'s Mot., dkt. #7, at 11. None of these things are appropriate reasons to try unrelated claims together. Plaintiff cannot join claims simply to increase the chance that their collective weight will get him a better settlement; each claim must stand on its own.

In addition, plaintiff says that some of the defendants in the unrelated claims may be among the unknown members of the "special needs" committee and the committee for approving surgical procedures. If that is true, plaintiff can amend his complaint at the appropriate time to add them if they took acts related to the claims in his lawsuit.

Plaintiff says that if he cannot join the unrelated claims in one lawsuit, he wishes to dismiss them rather than proceed with them in separate lawsuits. That is his choice. I note

that plaintiff does not say that he wishes to pursue any of his unrelated claims *instead of* his medical care claims related to his knee. Accordingly, I will dismiss the unrelated claims without prejudice to plaintiff's refiling them at a later date. However, plaintiff should know that the statute of limitations will continue to run on the dismissed claims. In addition, if he chooses to file a new lawsuit in the future, he will have to pay a new filing fee. If he cannot pay the full fee at once, he may file a petition for leave to proceed in forma pauperis under 28 U.S.C. § 1915 and submit his trust fund account statement to allow the court to assess an initial partial payment.

ORDER

IT IS ORDERED that

1. Plaintiff Loren Leiser's motion for reconsideration, dkt. #7, is DENIED.

2. The following claims are DISMISSED WITHOUT PREJUDICE to plaintiff's refiling them in a separate lawsuit at a later date:

(a) defendant Dave Rock refused to comply with a doctor's order to give plaintiff physical therapy for his shoulder;

(b) defendant Hannula is refusing to treat pain in both of plaintiff's feet, by conducting tests, prescribing special shoes for him or prescribing adequate pain medication;

(c) defendants Voeks and Richardson required him to wear "hard cuffs" instead of "soft cuffs" during transport; and

(d) defendant Brian Bohlmann sexually assaulted him during a medical exam and defendants Dr. Burnett, Pamela Wallace, James Greer, Brad Hompe and Jeffrey Pugh knew that Bohlmann was a danger to prisoners but failed to take reasonable measures to protect them.

3. The complaint is DISMISSED as to defendants Rock, Burnett, Wallace, Pugh and Wisconsin Health Care Insurance Liability Plan.

Entered this 1st day of September, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge