IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DWIGHT A. WILLIAMS,

OPINION AND ORDER

Plaintiff,

11-cv-721-bbc

v.

RICHARD A. RAEMISCH, DAVID J. MAHONEY,
IC SOLUTIONS, CONSOLIDATED FOODS INC.,
CORRECT CARE SOLUTIONS INC.,
CAPT. TEUSCHER, LT. TWOMBLY, LT. PIERCE,
SGT. PRICE, SGT. TURK, SGT. FLERES,
SGT. ELVE, SGT. EDENS, SGT. LINDSLEY,
TRACI ROBERTS, M. STONER,
G. BROCKMEYER, S. KOWALSKI,
DR. WEISSE, NURSE ALLISON and NURSE TAMARA,

Defendants.

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Various motions are before the court in this case brought by pro se plaintiff Dwight Williams about his conditions of confinement while he was housed at the Dane County jail and the Sturtevant Transitional Facility: (1) motion for judgment on the pleadings, filed by defendant Richard Raemisch, dkt. #50; (2) motion to dismiss, filed by defendant ICI Phone Solutions, Inc., dkt. #67; (3) motion for summary judgment, filed by defendants Nurse Allison, Correct Care Solutions, Inc., S. Kowalski, Nurse Tamara and Dr. Weisse, dkt. #71; (4) motion for summary judgment, filed by defendants G. Brockmeyer, Consolidated Food Service, Inc., Sgt. Edens, Sgt. Elve, Sgt. Fleres, Sgt. Lindsley, David J. Mahony, Lt. Pierce,

Sgt. Price, Traci Roberts, Megan Stoner, Capt. Teuscher, Sgt. Turk and Lt. Twombly, dkt. #77; and (5) motion for entry of default against defendant ICI Phone Solutions, dkt. ##95-96.

I am denying plaintiff's motion and granting all of defendants' motions. Plaintiff's motion for default seems to be a reaction to defendant ICI's failure to file an answer in this case, but that generally is not a sufficient reason for granting the relief plaintiff is requesting. A default judgment should be entered "only in extreme situations, or when other less drastic sanctions have proven unavailing. . . [I]t is a weapon of last resort, appropriate only when a party wilfully disregards pending litigation." Sun v. Board of Trustees of University of Illinois, 473 F.3d 799, 811 (7th Cir. 2007). That standard is not met in this case.

It seems that the reason defendant ICI never filed an answer is that it filed a motion to dismiss before the case was removed to this court. Under Fed. R. Civ. P. 12(b), a defendant may file a motion to dismiss instead of an answer. Unfortunately, none of the parties informed the court that a motion was pending at the time of removal and no briefing schedule was set until ICI filed a new motion to dismiss in September 2012. Regardless whether ICI should have notified the court of its previous motion or filed a new motion sooner, I cannot say that ICI is "wilfully disregard[ing] pending litigation."

Defendants' motions can be resolved without extended discussion. Although the scope of plaintiff's complaint is vast, covering issues from medical care to free exercise of religion to food quality, he fails to explain how any of the defendants violated his rights. With respect to defendant Raemisch's motion to dismiss, plaintiff repeats many times that

Raemisch had "a duty" to prevent his rights from being violated, but he does not explain in his complaint or in his response to Raemisch's motion what Raemisch did to violate his rights or how he was responsible for the conditions at the Sturtevant facility. If plaintiff named Raemisch as a defendant simply because he is Secretary of the Wisconsin Department of Corrections, that was a mistake. A person may not be held liable for a constitutional violation unless he was personally involved in the violation. This means that an official must have participated in the alleged conduct or facilitated it. It is not enough to show that a particular defendant is the supervisor of someone else who committed a constitutional violation. Burks v. Raemisch, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise."). Accordingly, I am dismissing the complaint as to Raemisch.

With respect to defendant ICI, plaintiff failed to respond to ICI's argument that it cannot be sued for a constitutional violation because it is not a government entity and because it did not violate plaintiff's rights. Accordingly, plaintiff has waived any claims against ICI. Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1042 (7th Cir. 1999) ("If [judges] are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning.").

The remaining defendants filed motions for summary judgment. Plaintiff did not respond to defendants' proposed findings of fact and he did not file an affidavit or

declaration in support of his claims. Although he did submit stacks of unverified documents, he does not explain how any of them might provide relevant evidence. Even plaintiff's briefs are nothing but conclusory allegations and legal argument. For example, in the context of discussing his medical care claims, plaintiff lists various issues for which he says he did not receive treatment, such as "high cholesterol," "kidney disease," and "erectile dysfunction," but he does not point to any evidence that he suffered from these conditions or, if he did, that he required specific treatment for them that a particular defendant knew about but failed to provide or that he was harmed by any of the defendants' actions. Regardless whether plaintiff is asserting a claim under the Constitution or state law, he cannot prevail on a claim simply by alleging that he did not receive treatment. Rather, he must adduce sufficient evidence to allow a reasonable jury to find that a particular defendant consciously disregarded his serious medical needs or harmed him as a result of negligence. Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650, 664 (7th Cir. 2012); Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860. (In addition to the Constitution and state common law, plaintiff cites various Wisconsin statutes, but he fails to explain how any of them apply to this case, let alone whether any of them provide a private right of action for damages.) Without those facts, it is impossible for plaintiff to prove that any defendant violated his rights under the Constitution or state law.

It is the same with respect to all of plaintiff's claims. He has not adduced any admissible evidence that any defendant prevented him from litigating a particular case, In re Maxy, 674 F.3d 658, 661 (7th Cir. 2012), treated his religious exercise differently from

other prisoners without secular reason for doing so, Grayson v. Schuler, 666 F.3d 450, 455 (7th Cir. 2012), viewed him naked for the purpose of harassing him, Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995); Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003), failed to provide adequate food or exercise, Prude v. Clarke, 675 F.3d 732, 734 (7th Cir. 2012); Thomas v. Ramos, 130 F.3d 754, 764 (7th Cir. 1997), discriminated against him because of his race, Black v. Lane, 824 F.2d 561, 562 (7th Cir. 1987), or engaged in any other conduct that violated his rights. Although plaintiff cites numerous cases throughout his briefs, these cases cannot help him without specific facts showing that his situation is the same as that of the plaintiffs in those cases.

On a motion for summary judgment, plaintiff has the burden to prove that a reasonable jury could find in his favor on each of his claims. Defendants do not have to disprove his claims. Shields v. Dart, 664 F.3d 178, 182 (7th Cir. 2011); Marion v. Radtke, 641 F.3d 874, 876-77 (7th Cir. 2011). Accordingly, defendants are entitled to summary judgment.

After defendants filed their dispositive motions, plaintiff filed documents that he called "amended/supplemental causes of action." Dkt. ##91 and 105. If plaintiff is seeking to amend his complaint, that request is denied as untimely. EEOC v. Lee's Log Cabin, Inc., 546 F.3d 438, 443 (7th Cir. 2008). In any event, I see nothing new in these documents that strengthens his claims. They are simply more of the same conclusory allegations and arguments.

ORDER

IT IS ORDERED that

1. Plaintiff Dwight Williams's motion for entry of default against defendant ICI Phone Solutions, dkt. ##95-96, is DENIED.

2. Defendant Richard Raemisch's motion for judgment on the pleadings, dkt. #50, is GRANTED.

3. Defendant ICI's motion to dismiss, dkt. #67, is GRANTED.

4. The motion for summary judgment filed by defendants Nurse Allison, Correct Care Solutions, Inc., S. Kowalski, Nurse Tamara and Dr. Weisse, dkt. #71, is GRANTED.

5. The motion for summary judgment, filed by defendants G. Brockmeyer, Consolidated Food Service, Inc., Sgt. Edens, Sgt. Elve, Sgt. Fleres, Sgt. Lindsley, David J. Mahony, Lt. Pierce, Sgt. Price, Traci Roberts. Megan Stoner, Capt. Teuscher, Sgt. Turk and Lt. Twombly, dkt. #77, is GRANTED.

6. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 26th day of November, 2012.

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