

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

DWIGHT A. WILLIAMS,

Plaintiff,

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. WIESSE, NURSE ALLISON,
NURSE TAMARA and C.L. SWANSON CORPORATION,²

Defendants.

OPINION AND ORDER

11-cv-721-slc¹

Pro se plaintiff Dwight Williams is proceeding on various claims regarding the treatment he received while he was incarcerated at the Dane County jail. Defendant C.L. Swanson Corporation has filed a motion to dismiss the complaint with respect to plaintiff's claims against it. Dkt. #42. (Because defendants removed the lawsuit from state court and plaintiff was no longer incarcerated at the time of removal, the court did not screen the

¹ I am exercising jurisdiction over this case for the purpose of this order.

² In his complaint, plaintiff identified this defendant as "Swanson C.L. Corporation." I have amended the caption to reflect this defendant's actual name as reflected in its filings with the court.

complaint pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A. Kerr v. Puckett, 138 F.3d 321 (7th Cir. 1998).) Swanson asserts two grounds for dismissal: (1) plaintiff's allegations against Swanson do not state a claim upon which relief may be granted; and (2) plaintiff's claims against Swanson may not be joined with the claims against the other defendants under Fed. R. Civ. P. 21. (In its opening brief, Swanson argued that the complaint should be dismissed for improper service, but it abandoned that argument in its reply brief. Dkt. #47 at 1 n.1.) Because I conclude that plaintiff's claims against Swanson are legally frivolous, I am granting the motion.

Plaintiff's 38-page complaint includes one claim against defendant Swanson:

Defendant Swanson C.L. Corporation had a duty to provide inmates of the Dane County Jail with equal commissary items, adequate necessities and updated wholesome food items. Defendant Swanson C.L. Corporation breached that duty by failing to provide inmates of the Dane County Jail with equal commissary items, adequate necessities and updated wholesome food items. The breach of duty resulted in damages of failure to provide equal commissary items or safe and or wholesome food items and or personal hygiene items, prejudice, serving food items that pose a risk to health and denial, deprivation and or infringement of due process of law and breach of contract. The breach of duty proximately caused the aforementioned damages.

Dkt. #1-4 at 11.

In his opposition brief, plaintiff adds the allegations that he received different canteen privileges depending on the facility in which he was housed (the city-county building or the public safety building), expiration dates are not "clearly posted" on canteen food items, Swanson did not offer food items for diabetics such as plaintiff, Swanson did not provide the means to prepare some of the food items or utensil necessary to eat them, Swanson did not provide the food items available to plaintiff at the hospital and Swanson failed to

provide food for prisoners such as plaintiff who have dental problems. He says that Swanson violated his Fourteenth Amendment rights to equal protection of the laws and due process of law, his Eighth Amendment right to be free from cruel and unusual punishment, the First Amendment, the Seventh Amendment, the Supremacy Clause, the Privileges and Immunities Clause, 21 U.S.C. § 301, Article I, §§ 1, 9 and 21 of the Wisconsin Constitution and Wis. Stat. §§ 227.10, 350.17 and 350.27. In addition, plaintiff says that he is a third party beneficiary to a contract between Swanson and defendant David Mahoney, the Dane County Sheriff.

Plaintiff's allegations do not state a claim upon which relief may be granted for several reasons. To begin with, plaintiff does not develop an argument with respect to most of the laws he says Swanson violated. Constitutional provisions involving freedom of speech and the right to a jury trial have no apparent connection to plaintiff's allegations; the federal statute he cites does not include a private right of action; and the state laws he cites either do not exist or are obviously inapplicable. Although third party beneficiaries may in some instances bring a claim for breach of contract, plaintiff does not identify how Swanson violated its alleged contract with defendant Mahoney.

The only legal theories plaintiff discusses at any length are the equal protection clause, the due process clause and the Eighth Amendment. However, plaintiff cannot sue Swanson for a constitutional violation unless Swanson was acting under color of law, which means that it would be fair to treat Swanson as if it were a government entity. West v. Atkins, 487 U.S. 42 (1988). Plaintiff does not explain in his complaint or his opposition

brief what defendant Swanson's relationship is to the jail. He says that Swanson had a contract with defendant Mahoney, but he does not describe the nature of the contract. Swanson says it was the vendor for the prison canteen and plaintiff does not dispute this view. However, even if I assume that Swanson was a vendor, that would not be enough to conclude that Swanson was acting as the government. Further, even if I assume that Swanson was acting under color of law, plaintiff does not allege that Swanson determined which items would be stocked at a particular facility. Swanson could not be held liable for failing to provide items simply because jail officials did not order them.

Finally, plaintiff cites no authority supporting his view that the absence of certain items from the canteen or the failure to put a particular label on those items could violate any of his rights. Plaintiff is correct that incarcerated persons have the right to be fed nutritionally adequate food, but he does not allege that all of his food was coming from the canteen, that defendant Swanson had knowledge of plaintiff's particular needs or that he was harmed in any way from any items he purchased from the canteen. The due process clause applies to deprivations of liberty and property and plaintiff fails to explain how Swanson deprived him of either. The equal protection clause prohibits differential treatment in some contexts, but I am not aware of any authority supporting a view that prisoners have a right to the same canteen items at every facility.

Because plaintiff has failed to show that he has alleged any claim that has merit against defendant Swanson, I am granting Swanson's motion to dismiss.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendant C.L. Swanson Corporation, dkt. #42, is GRANTED. Plaintiff Dwight Williams's complaint is DISMISSED as to defendant Swanson.

Entered this 21st day of June, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge