

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

SYLVESTER JACKSON,

Plaintiff,

v.

RANDALL HEPP, GARY H. HAMBLIN,
TAMMY MAASSEN, KENNETH ADLER,
DEBRA TIDQUIST, CARLA GRIGGS,
GEORGIA KOSTOHRYZ, GREG MEIER,
CHERYL MARSOLEK, BETTY PETTERSON,
SGT. CLARK and JODI DOUGHERTY,

Defendants.

OPINION and ORDER

11-cv-774-bbc

Pro se plaintiff Sylvester Jackson is proceeding on claims that various prison officials violated his rights under the Eighth Amendment by failing to treat his chronic back pain and complications that arose after he had surgery on his toes. After several months of delay caused by disputes over a medical release, plaintiff's motion for a preliminary injunction is ready for decision. Dkt. #14.

Unfortunately, there are a number of problems with both sides' submissions. First, plaintiff's motion raises a number of issues that are outside the scope of this case, such as allegedly retaliatory conduct reports he has received and alleged failures to administer insulin for his diabetes. I have not considered facts or arguments other than those related to plaintiff's back pain or foot problems, which are the issues he raised in his complaint. If

plaintiff believes that prison officials are violating his rights in other ways, he must file a separate lawsuit.

Second, plaintiff's proposed findings of fact rely on exhibits 1 through 58, but those exhibits are not part of the record. In fact, no exhibits accompanied plaintiff's motion. On September 11, 2012, plaintiff filed four documents in support of his motion, dkt. #51, but these seem to be supplemental exhibits that were created after plaintiff filed the motion. The only large group of exhibits from plaintiff was filed approximately one week before he filed his preliminary injunction motion. Dkt. #9. However, these documents are labeled as exhibits 67 through 91 and are unrelated to the issues in plaintiff's motion. The numbering of those exhibits suggests that plaintiff may have believed he filed exhibits 1-66 previously, but the court does not have those exhibits.

Defendants' responses to plaintiff's proposed findings of fact did not help the situation. Instead of pointing out that the exhibits were missing, defendants responded to each of plaintiff's 55 proposed findings by stating that "Plaintiff fails to cite to any admissible evidence to support his assertion and it should therefore be disregarded by the Court." Defendants did not otherwise explain their objection, so it gave no notice to plaintiff or the court of the basis for their objection. What's worse, defendants should have realized that plaintiff's proposed findings of fact closely tracked the averments in his declaration. Dkt. #25. Because plaintiff relies primarily on his personal knowledge in making those averments, defendants should not have raised a blanket objection to plaintiff's proposed findings of fact on the ground that they rely on inadmissible evidence. It is

disappointed that counsel failed to consider each proposed finding individually. I anticipate that counsel will not repeat the same mistake at summary judgment.

Unfortunately for plaintiff, even if I consider all of his proposed findings of fact and the exhibits he filed on September 11, he has failed to show that he has any likelihood of success on the merits, which is a requirement for obtaining a preliminary injunction. American Civil Liberties Union of Illinois v. Alvarez, 679 F.3d 583, 589 (7th Cir. 2012). Plaintiff's submissions make it clear that he has complained about back pain, but that is all they show. Plaintiff has not submitted any evidence or even set out any allegations showing that any of the defendants did not use appropriate medical judgment in deciding how to address his complaints. In fact, the documents plaintiff filed recently show that medical staff have seen plaintiff recently for his complaints of pain.

As I explained to plaintiff in the order screening his complaint, to prevail on his claim under the Eighth Amendment, plaintiff must show that defendants are not using medical judgment in treating him or that their actions are "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted). Even if I accept as true all of the facts alleged in plaintiff's proposed findings of fact, they provide no basis from which it may be inferred that defendants' conduct meets this standard because he says nothing about defendants' response to his complaints or the reasons for their treatment decisions.

ORDER

IT IS ORDERED that plaintiff Sylvester Jackson's motion for a preliminary injunction, dkt. #14, is DENIED.

Entered this 19th day of September, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge