

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

JOHN L. DYE, JR.,

Plaintiff,

v.

CHARLES J. GRISDALE, PH.D., DR. JEFFERY
GARBELMAN, PH.D., DR. RALPH FROELICH, M.D.,
MICHAEL THURMER and BELINDA SCHRUBBE,

Defendants.

ORDER

11-cv-443-bbc

Plaintiff John L. Dye, Jr., a prisoner at the Waupun Correctional Institution, brought this civil suit in which he contends that defendants Dr. Charles Grisdale, Jeffery Garbelman, Dr. Ralph Froelich, Michael Thurmer and Belinda Schrubbe were deliberately indifferent to his serious medical needs when they denied him the opportunity to eat his meals alone in a private cell, despite their knowledge of the psychiatric conditions that prevent him from eating in the presence of others. Plaintiff has struck out under 28 U.S.C. § 1915(g) but was allowed to proceed with the present case because he alleged that he was in imminent danger of serious physical injury at the time he filed his complaint.

In a December 6, 2012 order, I granted defendants' motion to revoke plaintiff's in forma pauperis status because the facts adduced by the parties at the preliminary injunction and summary judgment stages showed that plaintiff was not in imminent danger when he

filed his June 23, 2011 complaint. In that order, I stated as follows:

As stated above, the facts provided by the parties both in support of plaintiff's motion for preliminary injunctive relief and the parties' cross motions for summary judgment indicate that plaintiff is bringing claims for past harm: the periods between December 21, 2010 and January 5, 2011, and between January 12, 2011 and March 16, 2011. Plaintiff's feed-cell and single-cell statuses were reinstated in March 2011, well before plaintiff filed his complaint in this action on June 23, 2011.

Plaintiff argues that "even though [he] . . . may have obtained a reinstatement of the very things for which he petitioned the court . . . the reinstatement was/is not permanent and subject to change without notice," and quotes from correspondence from defendant Grisdale stating that "all [accommodations] are subject to change." A purely speculative revocation of plaintiff's feed-cell or single-cell statuses in the future is not enough to invoke the imminent danger exception to § 1915(g); it goes without saying that any accommodation, medical treatment or condition of confinement is "subject to change" on a day-to-day basis.

I instructed plaintiff that the case would be closed unless he submitted the remainder of the \$350 filing fee for this action. Plaintiff has not done so by the deadline set by the court, but rather has filed a motion for reconsideration of the December 6 order as well as a renewed motion for preliminary injunctive relief, stating that his feed-cell status expired on December 2, 2012 and has not been renewed by Dr. Endres, who told him that the Psychological Services Unit "no longer issues clinical restrictions." (Plaintiff notes that Dr. Endres responded to his requests because defendants Grisdale and Garbelman have both left the prison.)

To meet the imminent danger requirement, an inmate must show that the threat or prison condition facing him is "real and proximate" at the time he files his complaint. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (quoting Lewis v. Sullivan, 279 F.3d

526, 529 (7th Cir. 2002). Unfortunately for plaintiff, this new evidence is not sufficient to show that he was in imminent danger eighteen months ago, when he filed this lawsuit. His new allegations against Dr. Endres (who is not a defendant named in this litigation) are not part of the claims on which he is proceeding in this lawsuit. Accordingly, I will deny both of plaintiff's motions and close the case.

Finally, I note that although plaintiff was not in imminent danger of serious physical harm at the time he filed this lawsuit, his new allegations suggest that he is *currently* in imminent danger because his anxiety disorders may prevent him from eating in front of other people. Plaintiff is free to file a new complaint against Endres and any other prison official responsible for making determinations about plaintiff's feed-cell status. At that time, I will consider whether plaintiff may proceed in forma pauperis with the new case.

ORDER

IT IS ORDERED that

1. Plaintiff John L. Dye's motion for reconsideration of the court's December 6, 2012 order, dkt. #85, and his renewed motion for preliminary injunctive relief, dkt. #86, are DENIED.

2. The clerk of court is directed to close the case for plaintiff's failure to prepay the \$350 filing fee.

Entered this 7th day of January, 2013.

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