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

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CHRISTOPHER GOODVINE,

Plaintiff,

v.

GARY ANKARLO, LIEUTENANT BOODRY, OFFICER CONROY, JEFF HEISE, DR. JOHNSON, OFFICER JULSON, DR. KUMKE, DR. McLARIN, MICHAEL MEISNER, OFFICER MILLONIG, CAPTAIN MORGAN, DR. NELSON, JANEL NICKEL, OFFICER SCHNEIDER, OFFICER WILEY, and OFFICER WITTERHOLT,

Defendants.

OPINION AND ORDER

12-cv-134-wmc

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In this civil action, plaintiff Christopher Goodvine, an inmate at the Columbia Correctional Institution, claims that prison staff failed to take reasonable steps to prevent him from attempting suicide, and still refuse to implement policies and practices that will effectively prevent him from harming himself, in violation of the Eighth Amendment's prohibition on cruel and unusual punishment. This opinion and order addresses several motions filed by plaintiff: a motion to strike defendants' answer to his complaint, a motion to amend and supplement his complaint, and a motion to appoint counsel. After considering the parties' submissions, the court will grant plaintiff's motion to supplement his complaint and will deny the other two motions. The court also requests briefing from the parties as to whether it should appoint an impartial expert psychologist, with costs taxable to defendants, to assist in this matter.

## MOTION TO STRIKE DEFENDANT'S ANSWER

On September 25, 2012, defendants filed their answer to plaintiff's complaint, pleading that they lacked sufficient knowledge to admit or deny many of plaintiff's allegations regarding his medical condition and history of self harm and hospitalization. Plaintiff responded with a motion asking the court to strike defendants' answer or in the alternative to direct defendants to supplement their answer, arguing that many of the disputed allegations can be readily verified by consulting his prison medical file. Defendants explained that at the time they filed their answer they did not have access to plaintiff's medical file, and asked for additional time to obtain the file. The court accepted this proposal and gave defendants a month to submit an amended answer. (*See* dkt. #40 at 3-4.)

Plaintiff subsequently filed a brief in reply, asking the court to impose sanctions against defendants or their counsel for acting in bad faith. Plaintiff pointed out that he executed a medical file release form on August 24, 2012, giving defendants plenty of time to obtain the file in advance of their deadline to answer. However, as defendants now explain, this release form became useless soon after it was signed, because on August 29, 2012, plaintiff and his medical file were transferred to the Wisconsin Resource Center (WRC), a Wisconsin Department of Health Services (DHS) facility. Defendants' counsel avers that the WRC uses its own medical release form and will not honor the DOC medical release previously signed by plaintiff. Although plaintiff claims that the WRC and DOC releases are substantially identical, the court has no reason to believe that defendants' counsel is wrong in her assertion that a separate form is needed, let

alone that the delay in obtaining the medical records was the product of bad faith on defendants' part. Accordingly, plaintiff's motion for sanctions will denied as unwarranted, and his motion for an order requiring defendants to revise their answer will be denied as moot, now that defendants have filed their amended answer. (*See* dkt. #45.)

**MOTION TO SUPPLEMENT PLEADINGS**

"The court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d). A supplemental pleading is a tool of "judicial economy and convenience," *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988), which serves to "avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted," *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28-29 (4th Cir. 1963). Although leave to file an amended or supplemental complaint should be granted liberally, a request to amend may be denied for undue delay, undue prejudice to the party opposing the motion, or futility of the amendment. *Butts v. Aurora Health Care, Inc.*, 387 F.3d 921, 925 (7th Cir. 2004); *E. Natural Gas Corp. v. Aluminum Co. of Am.*, 126 F.3d 996, 999 (7th Cir. 1997).

Plaintiff's amended complaint adds four more parties and an additional discrete incident in which defendants allegedly ignored his risk of self-harm, and then refused to treat a severe laceration on his arm for 72 hours. In response, defendants argue that allowing plaintiff to add claims and additional parties at this stage would delay the course of the litigation.

To the contrary, although allowing plaintiff to supplement his claim would expand this litigation as to both the number of defendants and scope of time during which the alleged incidents occurred, the prejudice to defendants is limited by the fact that litigation is still in its early phases. Moreover, the supplemental claims asserted are essentially of a piece with the claims presented in plaintiff's initial complaint -- the new claims merely add one more "incident" of alleged deliberate indifference, which takes place against a common backdrop of alleged mental illness and allegedly defective prison policies. The court will therefore allow plaintiff to amend his complaint.

The court must still screen plaintiff's new allegations just as it screened the allegations in the original complaint. 28 U.S.C. § 1915(e)(2)(B). That screening is filed as a separate opinion and order.

**MOTION TO APPOINT COUNSEL**

Plaintiff's motion to appoint counsel is denied for the same reasons articulated in the court's previous screening order at dkt. #21. If anything, plaintiff's performance since that order confirms he is more than capable of representing himself in this matter. The court is, however, considering the appointment of an impartial expert to assist it in evaluating plaintiff's psychological state, the risks presented and the availability of reasonable alternatives to the protocols adopted by the state to ensure plaintiff's safety and treatment, if any. *See Ledford v. Sullivan*, 105 F.3d 354, 361 (7th Cir. 1997). Accordingly, both sides may have fourteen days (1) to show cause why an expert should not be appointed with costs apportioned to defendants in light of plaintiff's impecunious status; and (2) if they wish, to submit nominations to act in this capacity.

**ORDER**

IT IS ORDERED that:

1) plaintiff Christopher Goodvine's motion to supplement his complaint (dkt. #48) is GRANTED;

2) plaintiff's motions to strike defendants' answer (dkt. #34) and for court-appointed counsel (dkt. #51) are DENIED; and

3) both sides may have fourteen days (1) to show cause why an impartial expert should not be appointed to assist the court in evaluating plaintiff's psychological state, the risks presented and the availability of reasonable alternatives to the protocols adopted by the state to ensure plaintiff's safety and treatment, if any, with costs apportioned to defendants, and (2) if the parties wish, to submit nominations to act in this capacity.

Entered this 7th day of February, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge