

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

MUSTAFA-EL K.A. AJALA
f.k.a. Dennis E. Jones-El, and
SPENCER A. BROWN,

Plaintiffs,

v.

KELLI WEST, AMY SMITH,
RICK RAEMISCH, TODD OVERBO,
CATHY JESS, PETER HUIBREGTSE,
GARY HAMBLIN, TIM HAINES,
CHARLES COLE, STEVE CASPERSON,
GARY BOUGHTON and ANTHONY BROADBENT,

Defendants.

ORDER

13-cv-184-bbc

Pro se plaintiffs Mustafa-el K.A. Ajala and Spencer A. Brown have filed a proposed complaint about various restrictions on their practice of Islam in prison. Their complaint includes no fewer than 15 claims:

- (a) in 2012, defendant Todd Overbo denied Spencer A. Brown's request to be "added to the list for Ramadan participation" on the ground that Brown's request was untimely, even though Overbo granted an even later request of a white Muslim; plaintiff complained to Tim Haines, Kelli West and Charles Cole, who refused to take action;
- (b) in 2012, defendant Overbo denied plaintiff Mustafa-El K.A. Ajala's request "to be added to the list for Ramadan fast meals" on the ground that Ajala's request was untimely, even though Overbo granted an even later request of a white Muslim; plaintiff complained to defendants Haines, West and Cole, who refused to take action;

- (c) in 2008, 2009 and 2010 defendant Anthony Broadbent failed to provide plaintiff Ajala's Ramadan meals before the dawn prayer; Ajala complained to defendants Overbo, Peter Huibregtse and Richard Raemisch, but they refused to take action;
- (d) in 2008, 2009 and 2010 defendant Broadbent failed to provide Ajala hot meals during Ramadan; Ajala complained to defendant Raemisch, but he refused to take action;
- (e) in 2008, 2009 and 2010 defendants Overbo, Huibregtse and Broadbent "shortened the meal portions on all Muslims fasting during Ramadan to approximately one whole meal less each day"; Ajala complained to defendant Raemisch, but he refused to take action;
- (f) in 2012 defendants West, Cathy Jess, Overbo, Broadbent, Haines and Cole denied plaintiff Brown's request for an Eid-ul-Fitr meal;
- (g) in 2010 defendants Overbo, Broadbent and Huibregtse denied Ajala's request for an Eid-ul-Fitr meal;
- (h) in 2011 and 2012 defendants Overbo, Broadbent, Haines, West, Jess and Cole denied Ajala's request for an Eid-ul-Fitr meal;
- (i) in 2006 defendant Raemisch, "under the direction of defendant Steve Casperson," denied Ajala's request for a halal diet;
- (j) in 2007, "at the direction of defendants Raemisch and Casperson," defendants Overbo, Huibregtse, Gary Boughton and Broadbent denied Ajala's request for a halal diet;
- (k) in 2008 defendants Raemisch, Casperson, Boughton, Broadbent and Amy Smith denied Ajala's request for a halal diet;
- (l) in September 2009, defendants Raemisch, Casperson, Boughton, Broadbent, Smith, Jess, West, Haines, Cole and Huibregtse denied Ajala's request for a halal diet;
- (m) defendants Casperson, Jess, Raemisch, West, Cole, Smith and Gary Hamblin "implemented" a policy that required Ajala in October 2009 to sign an agreement that the "vegan/vegetarian" diet "accurately reflect[s]" Ajala's "religious needs," even though that diet is more

restrictive than a true halal diet;

- (n) since June 2008 defendants Huibregtse, Haines, Boughton, Overbo, Raemisch and West have been refusing to allow Ajala and other prisoners in segregation to attend Jumuah and Taleem services; and
- (o) defendants Overbo, Boughton, Huibregtse, Raemisch and West have been refusing to allow Ajala to wear his kufi outside his cell and the chapel.

These claims cannot be contained within a single lawsuit. Plaintiffs seem to believe that their claims can be joined because they all relate to religious issues, but the test for joinder is not whether the claims all have the same general subject matter. Rather, under Fed. R. Civ. P. 20, multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each of them that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. Many of plaintiffs' claims arise out of separate occurrences and relate to different policies and practices, so they do not satisfy that test.

It is true that plaintiffs have named many of the same defendants across their various claims, so plaintiffs may be trying to take advantage of Fed. R. Civ. P. 18, which allows parties under some circumstances to joined unrelated claims against the same defendant. However, the overlap of defendants means little in a case like this one in which plaintiffs have sued a large number of defendants on certain claims for what seems to be no other reason than one or both plaintiffs complained about a problem to a particular defendant. For other claims, plaintiffs do not explain at all how each defendant was personally involved.

Even if I assume that the joinder of plaintiffs' claims would not violate Rule 18 and

Rule 20, it would be unwieldy to allow plaintiffs to maintain so many claims against so many different defendants in a single case. “A litigant cannot throw all of his grievances, against dozens of different parties, into one stewpot.” Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680, 683 (7th Cir. 2012). See also Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011) (“[U]nrelated claims against different defendants belong in separate lawsuits . . . to prevent the sort of morass produced by multi-claim, multi-defendants suits like this one.”) (internal quotations omitted). Under Fed. R. Civ. P. 21, courts have discretion to sever claims when differences between the claims predominate over common questions. Lee v. Cook County, Illinois, 635 F.3d 969, 971 (7th Cir. 2011). See also In re High Fructose Corn Syrup Antitrust Litigation, 361 F.3d 439, 441 (7th Cir. 2004) (court has inherent authority to sever claims in interest of justice even when standard under Rule 21 is not satisfied); Aiello v. Kingston, 947 F.2d 834, 835 (7th Cir. 1991) (“Fed. R. Civ. P. 21 allows a court to sever claims that are logically distinct.”).

Under that standard, I conclude that plaintiffs’ claims belong in no fewer than four lawsuits. In particular, what I have labeled as claims (a), (b), (c), (d), (e), (f), (g) and (h) are all related to policies and practices surrounding Ramadan, so those claims may be joined as Lawsuit #1. Claims (j), (k), (l) and (m) are related to policies and practices surrounding halal, so those claims may be joined as Lawsuit #2. Claim (n) related to Jumuah and Taleem is Lawsuit #3 and claim (o) related to the wearing of kufis is Lawsuit #4.

Plaintiff Brown has asserted two claims only and both of those are included in Lawsuit #1, so he will not have to choose which claims he wishes to pursue. However,

plaintiff Ajala will have to make a number of decisions before I can allow him to proceed on any of his claims.

Under George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007), I may apply the initial partial payment plaintiff Ajala has made to only one of the four lawsuits I have identified above. Ajala will have to choose which lawsuit that is. That lawsuit will be the only lawsuit assigned to this case number.

With respect to the other three lawsuits, one option for plaintiff Ajala is to pursue them separately. In that case, he will be required to pay separate filing fees for each lawsuit. In addition, Ajala may be subjected to a separate strike under 28 U.S.C. § 1915(g) for each of the separate lawsuits he pursues if the lawsuit is dismissed for failure to state a claim upon which relief may be granted. As Ajala may be aware, once a prisoner receives three strikes, he is not able to proceed in new lawsuits without first paying the full filing fee except in very narrow circumstances. 28 U.S.C. § 1915(g).

Alternatively, plaintiff Ajala may choose to dismiss one or more of the other lawsuits voluntarily. If he chooses this latter route, he will not owe additional filing fees or face a strike for any lawsuit he dismisses. Any lawsuit dismissed voluntarily would be dismissed without prejudice, so Ajala would be able to bring it at another time, so long as he files it before the statute of limitations has run.

Plaintiff Ajala should be aware that because it is not clear at this time which of his separate lawsuits he will pursue, I have not assessed the merits of the claims raised in any of the lawsuits identified above or determined whether they comply with Fed. R. Civ. P. 8.

Once Ajala identifies the suit or suits he wants to continue to litigate, I will screen the complaint for both plaintiffs as required under 28 U.S.C. § 1915A. Because Ajala faces filing fees and potential strikes for each lawsuit he pursues, he should consider carefully the merits and relative importance of each of his potential lawsuits when choosing which of them he wishes to pursue.

If plaintiffs disagree with the way the court has grouped their claims or if they believe the court has left out claims they intended to assert or included claims they did not intend to assert, they may raise those objections, but plaintiff Ajala must still comply with this order and choose which of the four lawsuits he wishes to pursue. If he fails to do so, I will dismiss all of his claims for his failure to prosecute the case.

ORDER

IT IS ORDERED that

1. Plaintiff Mustafa-El K.A. Ajala, formerly known as Dennis E. Jones-El, may have until July 18, 2013, to identify for the court whether he wishes to proceed with Lawsuit #1, Lawsuit #2, Lawsuit #3 OR Lawsuit #4 under the number assigned to this case. Plaintiff Ajala must pick one and only one of these lawsuits to proceed under case no. 13-cv-184-bbc.
2. Plaintiff Ajala may have until July 18, 2013, to advise the court of which other lawsuits he wishes to pursue under separate case numbers, if any, and which lawsuits he will withdraw voluntarily, if any.
3. For any lawsuit that plaintiff Ajala dismisses voluntarily, he will not owe a filing

fee.

4. For each lawsuit plaintiff Ajala chooses to pursue, he will owe a separate \$350 filing fee and will be assessed an initial partial payment.

5. Once plaintiff Ajala chooses which lawsuits he wants to pursue, I will screen the claims of both plaintiffs under 28 U.S.C. § 1915A to determine whether they state a claim upon which relief may be granted. If plaintiff Ajala fails to respond to this order by July 18, 2013, I will enter an order dismissing his claims without prejudice for his failure to prosecute.

Entered this 3d day of July, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge