IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER ATKINSON, OPINION and ORDER

Plaintiff, 14-cv-736-bbc

v.

FELIPA MACKINNON, JOSEPH WARNKE,
and CRYSTAL SCHWERSENSKA,

Defendants.

- -

In this civil rights lawsuit plaintiff Christopher Atkinson alleges that defendants Felipa Mackinnon, Joseph Warnke and Crystal Schwersenska violated the First Amendment, Fifth Amendment and Religious Freedom Restoration Act by punishing him on the basis of his religious practices. Plaintiff has now filed a motion for leave to supplement his complaint pursuant to Federal Rule of Civil Procedure 15(d), which defendants have opposed. For the reasons set forth below, I will deny plaintiff's motion for leave to supplement his complaint.

BACKGROUND

After screening plaintiff's complaint, I entered an order on January 7, 2015 allowing plaintiff to proceed on the claims described above. The defendants were served and answered plaintiff's complaint. A pretrial conference order was entered on May 28, 2015, directing

that dispositive motions be filed on or before January 8, 2016 and setting July 25, 2016 as the date for trial. Discovery is ongoing and defendants have moved for summary judgment on administrative exhaustion grounds.

Two weeks after defendants filed their motion for summary judgment on exhaustion, plaintiff filed his motion for leave to supplement his complaint. The proposed supplemental allegations state that on March 10, 2015, defendant Schwersenska and FCI Oxford's warden, L.C. Ward, placed plaintiff in the Special Housing Unit for seven days as punishment for filing this lawsuit. According to plaintiff, the prison's stated reason for placing him in segregation—that he was overheard making "serious threats" about a fellow inmate—was mere pretext. In reality, defendant Schwersenska and Ward segregated him "to . . . retaliate against plaintiff for filing the original grievances and lawsuit in [this] civil action." Unlike Schwersenska, Ward is not a defendant in this action.

OPINION

Fed. R. Civ. P. 15(d) provides that "[a] 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." The standard governing motions to supplement a pleading under Rule 15(d) is the same as the standard that governs motions to amend filed under Rule 15(a). Glatt v. Chicago Park District, 87 F.3d 190, 194 (7th Cir. 1996). In either case, the district court has "substantial discretion" to permit or deny leave to amend or supplement. Chicago Regional Council of Carpenters v. Village of

Schaumburg, 644 F.3d 353, 356 (7th Cir. 2011). Here, I will exercise my discretion to deny plaintiff's request to supplement his complaint.

As an initial matter, this court is generally reluctant to allow prisoners to supplement or amend their complaints to include new claims that they have been retaliated against for filing the underlying lawsuit. These types of retaliation claims risk delaying resolution of the case indefinitely while the parties litigate and conduct discovery on each discrete instance of retaliation that may occur while the lawsuit progresses. Fitzgerald v. Greer, No. 07-cv-61, 2007 WL 5490138, at *1 (W.D. Wis. Apr. 2, 2007)("[A]llowing ongoing claims of retaliation to be added to a lawsuit as the lawsuit progresses could result in a lawsuit's life being extended indefinitely."); Upthegrove v. Kuka, No. 05-cv-153, 2005 WL 2781747, at *2 (W.D. Wis. Oct. 21, 2005) (noting that court would deny leave to add retaliation claims to "avoid complication of issues which can result from an accumulation of claims in one action"). This is not to say that amending or supplementing a complaint to bring retaliation claims is always improper, but in most instances it is less confusing and more efficient to bring them in a separate lawsuit.

This is one of those instances in which the proposed retaliation claim should be raised in a separate lawsuit. First, allowing plaintiff to supplement his complaint would delay resolution of the parties' dispute because it would involve adding Ward as a new defendant. By the time Ward is joined and answers the complaint, he will not have a fair opportunity to conduct discovery and prepare a dispositive motion before the January 8, 2016 dispositive motion deadline. To provide him sufficient time, I would have to modify the scheduling

order to extend the dispositive motion deadline. This could affect subsequent deadlines and might even require changing the trial date.

Second, defendants' opposition to plaintiff's motion for leave to supplement, dkt. #40, indicates that plaintiff may have failed to exhaust his administrative remedies before filing his proposed retaliation claim. Assuming that I were willing to both grant plaintiff's motion and allow his claim to proceed after screening it under Section 1915A, defendants would be entitled to an opportunity to raise this potentially dispositive threshold argument. However, the deadline for raising exhaustion arguments has passed. Prelim. Pretrial Conf. Order, dkt. #31 at 4 ("If a defendant wishes to obtain summary judgment on the basis of a plaintiff's failure to exhaust his administrative remedies, then that defendant must file a summary judgment motion raising this issue alone not later than [July 31, 2015].") I could allow Schwersenska and Ward to raise exhaustion arguments in a separate motion for summary judgment or as part of their final motion for summary judgment on the merits (assuming they would file one), but doing so would frustrate the court's efforts to efficiently resolve prisoner civil rights lawsuits by addressing potentially dispositive exhaustion issues only once and at the outset of the case.

Finally, allowing the proposed claim to go forward would significantly expand the scope of discovery because there are few relevant facts common to both the proposed claim and the current claim. The current claim relates to whether defendants took plaintiff's job grade and reduced his hours because of his religious practices; the proposed claim relates to whether defendant Schwersenska and Ward, who is not yet a party to this case, placed him

in segregation because he filed this lawsuit. It is unlikely that discovery regarding why plaintiff's job grade was changed and his hours were reduced would be relevant to why he was placed in segregation.

Ultimately, I am convinced this case has progressed to a point where allowing plaintiff to tack on a retaliation claim would unduly delay its resolution and distract from the issues that led to this lawsuit in the first place. Plaintiff is not prejudiced by being required to assert his retaliation claim as part of a separate lawsuit. Accordingly, I am denying plaintiff's motion for leave to supplement his complaint.

ORDER

IT IS ORDERED that plaintiff Christopher Atkinson's motion for leave to supplement his complaint, dkt. #36, is DENIED.

Entered this 29th day of October, 2015.

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