

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

CARL C. GILBERT, II,

Plaintiff,

v.

STATE OF WISCONSIN, ANDREA PALM, TONY
EVERS, DOUG BELLIE, DANIEL KATTENBRAKER,
DR. NESS, NATHAN HEGGESETH, KIMBERLY
HALL, LAURA THOMAS, KAYLA REIMANN,
MICHAEL LUTZ, JUSTINE STEINMETZ, CORY
SMITH, JODIE BELOUNGY, ANN MORAN,
MITCHELL LENSKI, MEGAN L. MILLER, and JOHN
OR JANE DOE DEFENDANTS,

Defendants.

OPINION and ORDER

20-cv-194-jdp

Pro se plaintiff Carl C. Gilbert, II, a civil detainee confined at Sand Ridge Secure Treatment Center, in Mauston, Wisconsin, alleges that facility staff and other state officials have failed to provide him with adequate medical care for an injury to his right knee.

This case was closed after Gilbert failed to submit an initial partial payment of the filing fee, and after he later made that payment I denied his motion to reopen the case because his complaint failed to comply with the Federal Rules of Civil Procedure. Dkt. 24. I gave him a chance to amend his complaint to better articulate his claims, in particular to explain which of the more than 100 defendants he named were actually responsible for denying him medical care. *Id.* I also denied his motion for the court's assistance in recruiting him counsel. *Id.*

Gilbert has responded by filing two virtually identical amended complaints, Dkt. 27 and Dkt. 29, along with two copies of the same letter asking the court to reopen the case and appoint him counsel, Dkt. 28 and Dkt. 30. I'll consider the first submission of each document and disregard the duplicates.

Many of Gilbert's new allegations suffer from the same problems as the allegations in his original complaint. He continues to fail to explain how each of the many defendants named in the caption harmed him. He also again states that some of the defendants retaliated and discriminated against him, but he doesn't explain how he knows that defendants acted with a retaliatory or discriminatory motive. Gilbert states that many of the defendants conspired to harm him, but conclusory allegations of a conspiracy aren't sufficient to state a claim. *See Cooney v. Rossiter*, 583 F.3d 967, 970–71 (7th Cir. 2009). Gilbert also suggests that state officials used false medical reports to civilly commit him and keep him committed at Sand Ridge. But those types of claims do not belong in a civil rights lawsuit brought under § 1983. Rather, he could bring those claims in a habeas corpus action after first exhausting his state court remedies.

But Gilbert does more clearly explain a handful of his medical care claims. He says that defendants Dr. Daniel Kattenbraker, Dr. Ness, and John or Jane Doe medical staffers delayed years in approving his right knee replacement despite him suffering chronic pain. After he eventually received the knee replacement, defendant Nathan Heggeseth didn't provide him necessary physical therapy. And he says that all the nurses he names as defendants—his complaint includes Nurses Laura Thomas, Kayla Reimann, and Justine Steinmetz—delayed a second surgical appointment in 2019.

Claims by prisoners who are not convicted, such as civilly committed Chapter 980 patients like Gilbert, are ordinarily governed by the Fourteenth Amendment, under which plaintiffs need not prove the defendant's subjective state of mind; they need show only that the defendant's actions were "objectively unreasonable." *Kingsley v. Hendrickson*, 576 U.S. 396–97 (discussing a pretrial detainee's excessive force claim); *Sain v. Wood*, 512 F.3d 886, 893 (7th Cir. 2008) (Fourteenth Amendment governs claims regarding treatment of civilly

committed individuals). His allegations against Kattenbraker, Ness, John or Jane Doe medical staffers, Heggeseth, Thomas, Reimann, and Steinmetz are sufficient to state Fourteenth Amendment medical care claims against these defendants.

Gilbert has renewed his motion for the court's assistance in recruiting him counsel. Dkt. 28. I denied his previous motion because there wasn't a reason to think that amending his complaint would be beyond his capabilities. Dkt. 24, at 3. Now the case will be proceeding past the screening stage, but it is still too early to tell whether the case will be too complex for Gilbert to handle. I will deny Gilbert's motion, again without prejudice. After defendants answer the complaint, the court will hold a telephonic preliminary pretrial conference, at which Magistrate Judge Stephen Crocker will explain the schedule, discuss some of the procedures that the parties will use to litigate the case, and outline the process for Gilbert to use discovery methods to identify the names of the Doe defendants and to supplement his complaint to include those defendants' names. If Gilbert has questions about court procedure, he may ask them then. If Gilbert refiles his motion for assistance of counsel, he will have to explain what specific litigation tasks he cannot perform himself.

ORDER

IT IS ORDERED that:

1. Plaintiff Carl C. Gilbert's motion to reopen the case, Dkt. 28, is GRANTED.
2. Plaintiff is GRANTED leave to proceed on Fourteenth Amendment medical care claims against defendants Daniel Kattenbraker, Dr. Ness, John or Jane Doe medical staffers, Nathan Heggeseth, Laura Thomas, Kayla Reimann, and Justine Steinmetz.
3. The remaining defendants are DISMISSED from the case.
4. Plaintiff's renewed motion for the court's assistance in recruiting him counsel, Dkt. 28, is DENIED without prejudice.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's amended complaint, Dkt. 27, and this order are being sent today to the Attorney General for service on defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
6. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
7. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
8. If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his claims may be dismissed for his failure to prosecute them.

Entered July 15, 2021.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge