

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD WESLEY : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
DONALD T. VAUGHN, et al :  
Defendants. : No. 99-1228, 99-1229

MEMORANDUM ORDER

J. M. KELLY, J.

JUNE , 2002

Presently before the Court is a Motion To Dismiss Plaintiff's Amended Complaint in Civ. A. No. 99-1229 filed by Defendants and pro se<sup>1</sup> Plaintiff Ronald Wesley's response, misnamed, "Plaintiff's Motion In Opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint." Wesley, a prisoner currently incarcerated at the State Correctional Institution at Graterford ("Graterford"),<sup>2</sup> filed separate civil suits, Civ. A. No. 99-1228 and Civ. A. No. 99-1229, against numerous prison officials, alleging civil rights violations and failure to reasonably accommodate his medical condition in violation of the American Disabilities Act (ADA). The procedural history of these

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<sup>1</sup> Wesley has had at least two Court appointed attorneys that have represented him at various stages of this case, but for various reasons, he became dissatisfied with their legal assistance. Although the Court directed the Clerk of Court to find another attorney to represent Wesley, those efforts have not yet been fruitful.

<sup>2</sup> Presently, Plaintiff is housed in Graterford's L-unit, the Restricted Housing Unit ("RHU"), serving disciplinary time until April 21, 2003.

two cases is lengthy. It is sufficient to say that the two actions were consolidated for all purposes, including discovery and trial, on April 3, 2001.

The only remaining claim in Civ. A. No. 99-1228 is Plaintiff's ADA claim, based on Graterford's policy of locking the showers at the end of scheduled shower period which resulted in an aggravation of Plaintiff's asthmatic condition. In Civ. A. No. 99-1229, Plaintiff asserted that the Defendants violated his rights under the Constitution and the ADA by placing him in a cell that lacked proper ventilation and assigning him cellmates who were heavy smokers even though the Defendants knew of his asthmatic condition.

On February 6, 2002, Plaintiff filed an Amended Complaint in civil action number 99-1229, a handwritten document totaling 125 pages with exhibits. In this document, Plaintiff names additional Defendants, not previously mentioned in either Civ. A. No. 99-1228 or Civ. A. No. 99-1229, asserting new claims relating to prison disciplinary proceedings and the decision of the Pennsylvania Board of Probation and Parole to deny Wesley parole. Plaintiff also complains about the failure of the prison medical staff to diagnose and timely inform him that he has Hepatitis C. Plaintiff argues these new claims are related to his original complaints because the events described in the amended complaint are a result of a conspiracy to retaliate against him for filing

the lawsuits.

In response to the Amended Complaint, Defendants first filed a motion to dismiss the Plaintiff's Amended Complaint because it violates Federal Rule of Civil Procedure 8(a) which provides that complaints should be a "short and plain statement... showing that the pleader is entitled to relief." After having received copies of the original Complaint in Civ. A. no. 99-1229, Defendants suggest instead that the Court dismiss Wesley's Amended Complaint and re-institute the original Complaint. Upon reviewing Plaintiff's Amended Complaint, the Court agrees with Defendants that the Amended Complaint violates Fed. R. Civ. P. 8(a) and should, therefore, be dismissed without prejudice.

Fed. R. of Civ. P. 15(a) allows parties to amend pleadings once as a matter of course at any time before responsive pleading is served. As such, Wesley has the right to amend his complaint in Civ. A. No. 99-1229, but not in Civ. A. No. 99-1228, a case which has already progressed beyond the point of amendments. Therefore, Plaintiff is precluded from naming new defendants or asserting new claims in Civ. A. No. 99-1228.

While it is not too late for Wesley to file an amended complaint in Civ. A. No. 99-1229, Fed. R. Civ. P. 8(a) requires that the complaint be a short and plain statement upon which relief may be granted. Wesley's amended complaint certainly does not conform to Rule 8(a). Rather, it is a lengthy and rambling

pleading consisting of 125 pages of narrative. The complaint should be short, concise and intelligible, not full of excruciating details which tends to confuse the reader.

Accordingly, the Court **DIRECTS** the clerk of the Court to enter the following:

1. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 62 in Civ. A. No. 99-1228) is **GRANTED**. Plaintiff's Amended Complaint (Doc. No. 26 in Civ. A. No. 99-1229) is **DISMISSED** without prejudice.

A. Plaintiff may file, within thirty (30) days from the date of this Order, an amended complaint in Civ. A. No. 99-1229 that conforms to Federal Rule of Civil Procedure 8(a).

B. Plaintiff may not assert new claims or name additional Defendants related to Civ. A. No. 99-1228 in his amended complaint.

2. Plaintiff's Motion In Opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. No. 64 in Civ. A. No. 99-1228; Doc. No. 28 in Civ. A. No. 99-1229) is **DENIED**.

BY THE COURT:

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JAMES MCGIRR KELLY, J.