

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

DAVID PAUL PRENDERGAST, SR. :  
 :  
 : CIVIL ACTION  
v. :  
 :  
 : No. 00-CV-3099  
JAMES JANECKA, ET AL. :

**ORDER-MEMORANDUM**

Ludwig, J.

AND NOW, this 10th day of July, 2001, the motion of defendant Bukaris Anugerah, D.D.S. to dismiss the amended complaint is denied. Fed. R. Civ. P. 12(c).<sup>1</sup> Jurisdiction is federal question. 28 U.S.C. § 1332.

This § 1983 action alleges the denial of plaintiff's constitutional rights while he was an inmate at Delaware County Prison, Pa. 42 U.S.C. § 1983. The prison employed defendant Anugerah as a dentist. The amended complaint alleges that in an altercation with correctional officers, plaintiff David Paul Prendergast Sr. sustained dental injuries to which this defendant showed "deliberate indifference." Amend. complt. ¶¶ 90-94. The grounds asserted in the dismissal motion are that plaintiff did not exhaust administrative remedies as required by 42 U.S.C. § 1997e(a); establish deliberate indifference to plaintiff's condition; or identify his serious medical needs. Def. motion ¶¶ 4-6.

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<sup>1</sup> The motion to dismiss was filed under Rule 12(b)(6) after the complaint was answered. A 12(b)(6) motion is proper before the filing of an answer. Tr. of the Univ. of Pa. v. Mayflower Transit, No. 97-1111, 1997 WL 598001, at \*1 (E.D. Pa. Sept. 16, 1997). "Since the Rule 12(c) motion serves the same function as the untimely motion under Rule 12(b)(6), numerous courts faced with 'a misnamed motion to dismiss have chosen to overlook the semantic faux pas and restyled the motion as a Rule 12(c) motion' . . ." Id. at \*2, quoting Delta Truck & Tractor, Inc. v. Navistar Int'l. Transp. Corp., 833 F. Supp. 587, 588 (W.D. La. 1993). The motion will be considered under 12(c).

1. 42 U.S.C. § 1997e(a).<sup>2</sup> This administrative exhaustion requirement does not apply because the amended complaint was filed after plaintiff was released from prison and was no longer an inmate – even though the original complaint was filed while he was in custody. “Generally, the pleader should be given an opportunity to file an amended complaint to cure such pleading defects as failure to exhaust administrative remedies.” Biase v. Kaplan, 852 F. Supp. 268 (D.N.J. 1994) (internal quotations omitted), quoting Gillespie v. Civiletti, 629 F.2d 637, 641 (9th Cir. 1980). “Once an amended pleading is interposed, the original no longer performs any function in the case.” Hemispherx Biopharma v. Asensio, No. 98-5204, 2000 WL 807012 (E.D. Pa. June 7, 2000), quoting Wellness Community v. Wellness House, 70 F.3d 46 (7th Cir. 1995). See Abdul-Akbar v. McKelvie, 239 F.3d 307, 314 (3d Cir. 2001) (“Section 1997e(a) of Title 42, amended by the PLRA, requires that the plaintiff exhaust administrative remedies, but only if the plaintiff is a prisoner at the time of filing.”); Dill v. Oslick, No. Civ. A. 97-6753, 1999 WL 508675, at \*5 (E.D. Pa. Jul. 19, 1999) (Section 1997e did not apply to plaintiff because she was not a prisoner at the time of filing).

Moreover, exhaustion may have occurred. Plaintiff claims to have notified several prison officials, including the warden, of his alleged lack of dental treatment. Amend. complt. ¶¶ 91-92, 96. See Camp v. Brennan, 219 F.3d 279 (3rd Cir. 2000) (plaintiff was not required to “jump through any further administrative hoops”); Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999) (plaintiff had exhausted his administrative remedies by notifying his counselor under prison rules).

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<sup>2</sup> Section 1997e(a):

(1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1983 of this title by an adult convicted of a crime confined to any jail, prison, or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interest of justice, continue such case for a period of not to exceed 180 days in order to require exhaustion of such plain, and effective administrative remedies as are available . . . .

2. Deliberate indifference to plaintiff's condition. The amended complaint sets forth that plaintiff was "callously and indifferently denied proper treatment by Dr. Anugerah." Amend. cmplt. ¶¶ 43, 91. This allegation is sufficient to state a claim under the Eighth Amendment, 42 U.S.C. § 1983. See Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (deliberate indifference to serious medical needs of prisoners constitutes an Eighth Amendment violation); Government of the Virgin Islands v. Martinez, 239 F.3d 293, 302 (3d Cir. 2001). It is more specifically alleged that this defendant refused to render plaintiff necessary dental attention causing him unnecessary pain. Amend. cmplt. ¶ 57.

3. Plaintiff's serious medical need. According to the amended complaint, plaintiff "suffered permanent damage . . . to his jaw and mouth and the loss of at least three teeth." Amend. cmplt. ¶¶ 27, 30. Dental problems have been held to constitute serious medical problems in egregious instances. See, e.g., Hunt v. Dental Dep't., 865 F.2d 198, 200 (9th Cir. 1988) (unremediated denture loss); Fields v. Gander, 734 F.2d 1313, 1315 (8th Cir. 1984) (no follow-up dental care for three weeks despite knowledge of severe discomfort); Kinney v. Kalfus, 25 F.3d 633, 635 (8th Cir. 1994) (refusal to perform follow-up treatment or refer to another dentist).

For these reasons, the allegations of the amended complaint are enough to survive the dismissal motion.

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Edmund V. Ludwig, J.