

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

CURT THOMAS : CIVIL ACTION
 :
v. :
 :
DONALD VAUGHN, et al. :
 :
 : NO. 97-6929

MEMORANDUM ORDER

AND NOW, TO WIT, this day of November, 1998,
presently before the court are plaintiff Curt Thomas's ("Thomas")
motions: (1) for leave to amend his complaint; (2) in limine
objecting to three of defendant John Geist's ("Geist") witnesses;
(3) to compel discovery; (4) for reconsideration of this court's
Order of September 21, 1998 (collectively "Motions"); and Geist's
responses thereto.¹ For the reasons set forth below, the court
will deny Thomas's Motions.

Thomas brought a civil rights action against several
prison officials ("Defendants") at the State Correctional
Institution at Graterford ("SCI-Graterford"). His complaint
alleged claims under 42 U.S.C. § 1983 for Defendants' failure to
protect him from an assault by his cellmate, Antion Bell
("Bell"). On September 21, 1998, the court granted in part and
denied in part Defendants' motion for summary judgment. That
order permitted Thomas to proceed with his civil action with
respect to Geist, but dismissed the other defendants. A trial

¹ Thomas also made a request to have two inmate witnesses
testify at his trial, but withdrew such request in his letter
dated October 15, 1998.

date has been set for this case on December 7, 1998.

Since its September 21, 1998 Order, the court has received numerous correspondences from Thomas requesting various forms of relief. The court will treat these correspondences as four separate motions, and examine each separately.

First, Thomas seeks to amend his Complaint to add Chuck Bobb, B. Womack, R. Smith, and a fourth unnamed defendant.

(Pretrial Statement, Notice of Amendment at Pretrial Hearing and Proposed Settlement of the Case.) The court will treat such request as a motion for leave to amend the Complaint. Pleadings may be amended with leave of court, and "leave shall freely be given when justice so requires." Fed. R. Civ. P. 15. Granting or denying leave to amend is within the court's discretion.

Foman v. Davis, 371 U.S. 178, 182 (1962). Leave to amend may be denied for reasons such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." Id.

Thomas wishes to amend the Complaint to add Chuck Bobb, Bell's counselor. Thomas also wishes to add as defendants B. Womack, R. Smith and a third unnamed defendant, all members of the prison program review committee who recommended that Bell be single-celled. Thomas claims that all these people knew Bell was supposed to be single-celled, and thus should have protected Thomas from being assaulted. Because the court finds that

amendment of the Complaint would unduly delay the upcoming trial, it will deny Thomas's motion for leave to amend the Complaint.² Adding these defendants at this late stage would require the court to delay trial regarding Geist's liability until the added defendants could secure representation, answer the Complaint, conduct discovery and file any dispositive motions. Such delay would unduly prejudice Geist. Thus, the court will deny Thomas's motion to amend his Complaint.

Second, Thomas protested the addition of three witnesses by Geist in his amended pretrial memorandum. (Thomas Letter of October 10, 1998.) The court will treat this as a motion in limine objecting to Geist's witnesses. Thomas has objected to three witnesses listed in Geist's amended pretrial memorandum because he "know[s] nothing of these witnesses." (Thomas letter of October 10, 1998.) The court finds that Geist's amended pretrial memorandum is in accordance with Local

² The court notes that Thomas has had sufficient knowledge of the facts to move for the addition of these defendants since at least July 1998, but has delayed his motion to amend the Complaint until now.

The court also notes the probable futility of Thomas's requested amendment. Should the court grant Thomas's motion for leave to amend his Complaint, Thomas would have the burden of proving the deliberate indifference of these potential defendants in order for the court to find them liable for depriving Thomas's rights under 42 U.S.C. § 1983. It is unlikely that Thomas could prevail with respect to any of the defendants he wishes to add. Even if Thomas can show B. Womack, R. Smith and a third unnamed defendant suggested that Bell be single-celled, Thomas suggests no facts that show they were personally involved or knowingly acquiesced in celling Bell with Thomas. Furthermore, Thomas has not provided the court with any facts which would impose supervisor liability on Chuck Bobb, Bell's counselor.

Rule of Civil Procedure 16.1(c). Thus, the court will deny Thomas's motion in limine objecting to these witnesses.

Third, Thomas claims that he requested, but Geist failed to provide, an unredacted copy of Geist's Exhibit D-16. (Thomas letter of October 18, 1998.) The court will treat this as a motion to compel discovery. Thomas has requested a copy of the original Defendant's Exhibit D-16. He claims he has not received a full copy of that document because it has only two signatures on it. (Thomas Letter of October 18, 1998.) Thomas believes the document should have three signatures. Id. Geist's counsel has represented to Thomas and to the court that she has provided Thomas with an unredacted copy of that document. (Carrero Letter of October 21, 1998.) The court is satisfied that Geist's counsel has complied fully with Thomas's request. Thus, the court will deny Thomas's motion to compel discovery.

Last, Thomas has requested the court to reconsider its Order of September 21, 1998. (Thomas Letter of October 19, 1998.) The court will treat this as a motion for reconsideration. That Order granted summary judgment in favor of many of the SCI-Graterford prison officials originally sued by Thomas, leaving only the issue of Geist's liability for resolution at trial. In support of his motion for the court to reconsider its decision resulting in its September 21, 1998 Order, Thomas asks the court to revisit the Answer of Defendants Kerpovich, Caldwell, Hall and Ransom to Plaintiff's Amended Complaint. Thomas also argues that the court's decision may have

been based "on what could have been perjurious statements."

(Thomas letter of October 19, 1998.) Upon reconsideration of its Memorandum and Order of September 21, 1998 and review of the record, the court finds no evidence which compels it to alter its decision. Thus, Thomas's motion will be denied.

For the reasons set forth above, IT IS ORDERED that Thomas's Motions are DENIED.

LOUIS C. BECHTLE, J.