

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

JERRY CHAMPION
ADC #91354

PLAINTIFF

V.

NO: 2:10CV00070 HDY

RICHARD CLARK *et al.*

DEFENDANTS

ORDER

Plaintiff, currently held at the East Arkansas Regional Unit of the Arkansas Department of Correction, filed this *pro se* complaint (docket entry #2), pursuant to 42 U.S.C. § 1983, on May 17, 2010, alleging that Defendants Richard Clark, Ruby Jones-Manning, Joseph Hughes, Charlotte Green, and Flora Jones, provided him with inadequate medical care. On October 19, 2010, Plaintiff filed an amended complaint, adding as Defendants Wendy Kelley, Amanda Norman, and Walter Holloway (docket entry #81).

Now pending before the Court is a motion to dismiss and a brief in support filed by Defendants Clark, Green, Hughes, and Jones-Manning (docket entries #92 & #93), as well as a motion for summary judgment, brief in support, and statement of facts, filed by Defendant Wendy Kelley (docket entries #101-#103). Plaintiff has filed responses (docket entries #110 & #111). Plaintiff has also filed a “Motion to Dismiss,” which is in essence a response in opposition to Defendants’ motions (docket entry #129).

According to Plaintiff’s original complaint, Defendants Clark, Jones-Manning, Hughes, Green, and Jones, have provided him with inadequate medical care for his Hepatitis C since October of 2007. In his amended complaint, Plaintiff contends that Defendants Kelley, Holloway, and

Norman, have, since January 26, 2009, been deliberately indifferent to his back problems. Defendants Clark, Green, Hughes, and Jones-Manning, assert that Plaintiff's claims against them should be dismissed due to his failure to include any allegations against them in his amended complaint. Kelley asserts that Plaintiff has not exhausted any claim against her regarding his treatment for Hepatitis C.

Relevant to consideration of Defendants' motions is an order the Court entered on January 6, 2011, noting that Plaintiff's amended complaint addressed different claims and Defendants, and was not appropriate to be part of this lawsuit (docket entry #130). That order directed Plaintiff to pay the filing fee, or to file an application for leave to proceed *in forma pauperis*, so that the amended complaint could be opened as a new case. On January 14, 2011, Plaintiff filed an application for leave to proceed *in forma pauperis*, along with a statement that he wished to have his claims against Kelley, Holloway, and Norman, opened as a separate lawsuit (docket entry #135). In light of Plaintiff's motion and statement, the Court concludes that Defendants motions should be denied, and Plaintiff's amended complaint should be opened as a new case. Kelley's motion to stay discovery is therefore moot, as is Plaintiff's "Motion to Dismiss."

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's amended complaint (docket entry #81) is stricken from the record, and the Clerk is directed to open a new case with it, and with Plaintiff's pending motion for leave to proceed *in forma pauperis* (docket entry #135). The Clerk is further directed to administratively terminate the motion at docket entry #135.

2. Plaintiff's claims against Defendants Kelley, Holloway, and Norman, are DISMISSED WITHOUT PREJUDICE, and the names of Defendants Kelley, Holloway, and

Norman, are removed as party Defendants.

3. The motion to dismiss filed by Defendants Clark, Green, Hughes, and Jones-Manning (docket entry #92) is DENIED.

4. The motions for summary judgment, and to stay discovery, filed by Defendant Kelley (docket entries #101 & #108), are DENIED.

5. Plaintiff's motion to dismiss (docket entry #129) IS DENIED.

6. Plaintiff is allowed to proceed in this case with only his claims that Defendants Clark, Green, Hughes, Jones-Manning, and Jones, were deliberately indifferent to his medical needs relating to his Hepatitis C. Jones's answer to Plaintiff's amended complaint (docket entry #122) will be treated as her answer to his original complaint.

DATED this 20 day of January, 2011.


UNITED STATES MAGISTRATE JUDGE