

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

U. S. DISTRICT COURT  
Southern District of Ga.  
Filed in Office  
3:11 P. M  
Feb 6 2008  
m. Sander  
Deputy Clerk

DAVID RICHARD SUTHERLAND, )  
)  
Plaintiff, )  
)  
v. )  
)  
AL ST. LAWRENCE, et al., )  
)  
Defendants. )

CASE NO. CV407-96

O R D E R

Before the Court are Plaintiff's Notices of Appeal (Doc. 22 & 38), Motion for Leave to Appeal in Forma Pauperis (Doc. 47), and Motion to Compel Discovery (Doc. 48). Also before the Court is Defendants' Motion to Stay Discovery Pending Appeal. (Doc. 49.) These requests are DENIED.

**I. Notices of Appeal**

Plaintiff filed a Notice of Appeal on October 30, 2007, seeking to appeal the dismissal of his case in an Order dated October 11, 2007. However, on December 5, 2007, the Court entered an Order vacating its previous ruling. Because Plaintiff's case remains pending, the Notice of Appeal is DENIED AS MOOT.

Plaintiff also seeks to appeal (1) the dismissal of his claim against Defendant Eye Care and Glasses, (2) the

dismissal of his claim that the prison failed to provide him with an extra pancake at mealtimes, and (3) the denial of his request for appointment of counsel. (Doc. 38.) However, the Order dismissing these claims was not a final judgment from which an appeal may be taken. See Lloyd Noland Foundation, Inc. v. Tenet Health Care Corp., 483 F.3d 773, 777 (11th Cir. 2007) (holding that a plaintiff may not appeal until all claims are resolved). The Court therefore **DENIES** Plaintiff's Motion to Proceed in Forma Pauperis.<sup>1</sup>

## **II. Motions to Compel Discovery and to Stay Discovery**

Plaintiff has filed a Motion to Compel Discovery, seeking an Order compelling Prison Health Services and ABL Food Service to produce certain documents for copying and inspection. However, in its Order dated December 19, 2007 (in case number CV407-159), the Court dismissed all claims against Defendants Prison Health Services and ABL Food Service. Accordingly, Plaintiff's Motion to Compel is **DENIED**.

Defendants have filed a Motion to Stay Discovery Pending Appeal. Because Plaintiff's Motions to Appeal have

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<sup>1</sup> The Court does anticipate granting Plaintiff permission to file an interlocutory appeal in this case.

been denied, there is no need to stay discovery. The Motion to Stay Discovery is therefore DENIED AS MOOT.

**III. Pending Claims Are Ready to Proceed**

The following claims remain pending in this case: (1) that the jail dentist and Defendants St. Lawrence and Holmes denied Plaintiff a temporary filling in his tooth, demonstrating deliberate indifference to a serious medical need; and (2) that Defendants St. Lawrence and Holmes failed to provide medical treatment to Plaintiff, causing him to suffer a heart attack and continuous pain from a hernia. The case is ready to proceed on these two claims.

SO ORDERED this 6<sup>th</sup> day of February, 2008.



WILLIAM T. MOORE, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA