

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

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<b>ANTHONY WHEELER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Case No. 12-CV-2281</b>
	)	
<b>DR. PAUL TALBOT, et al,</b>	)	
	)	
<b>Defendants.</b>	)	

**OPINION**

This case is before the court for ruling on the Motion for Leave to File Motion to Dismiss (#58) filed by Defendant, Dr. Paul Talbot, and the Motion for Leave to Appeal in forma pauperis (#60) and Motion to Stay Proceedings (#62) filed by Plaintiff, Anthony Wheeler. Following careful review, this court rules as follows: (1) Defendant’s Motion to Leave to File Motion to Dismiss (#58) is GRANTED; (2) Plaintiff’s Motion for Leave to Appeal in forma pauperis (#60) is GRANTED; and (3) Plaintiff’s Motion to Stay Proceedings (#62) is DENIED.

**MOTION FOR LEAVE TO FILE**

On October 28, 2013, Defendant filed a Motion for Leave to File Motion to Dismiss (#58). Defendant noted that this court allowed Plaintiff to proceed with his state law claim of medical malpractice and stated that it would exercise supplemental jurisdiction over the claim. Defendant stated that Plaintiff failed to include an affidavit certifying the merit of his malpractice claim as required by 735 Ill. Comp. Stat. 5/2-622 (West 2010). Defendant stated that he believed good cause existed for the filing of a Motion to Dismiss based upon the

failure to provide the affidavit. Defendant attached a proposed Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss. This court concludes that Defendant has adequately shown that he should be allowed to file a Motion to Dismiss challenging Plaintiff's state law claim of medical malpractice. Accordingly, Defendant's Motion for Leave to File Motion to Dismiss (#58) is GRANTED. The clerk is directed to file the Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss attached to Defendant's Motion (#58).

#### MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

On October 31, 2013, Plaintiff filed a Motion for Leave to Appeal in forma pauperis (#60). Plaintiff also filed his prisoner trust fund ledger (#61) which shows that he has no available funds. Defendant did not file a Response to this Motion. This court concludes that Plaintiff's appeal from this court's denial of his request for an injunction requiring Defendant to provide treatment for his painful keloid scars has not been brought in bad faith. Accordingly, Plaintiff's Motion for Leave to Appeal in forma pauperis (#60) is GRANTED.

#### MOTION TO STAY

On November 5, 2013, Plaintiff filed a Motion to Stay Proceedings Pending Appeal (#62). Plaintiff asked this court to stay proceedings on his case while his appeal from this court's denial of his request for an injunction proceeds before the Seventh Circuit Court of Appeals.

On November 13, 2013, Defendant filed a Response to Motion for a Stay Pending Appeal (#63). Defendant argued that the issue Plaintiff has appealed is largely collateral to

the issues to be litigated in this court so that staying this proceeding would serve no purpose. Defendant pointed out that Plaintiff has claims for deliberate indifference to his keloids, retaliation claims against Defendant's co-defendants, and medical malpractice related to Defendant's treatment for Plaintiff's keloids. Defendant further stated that, in his motion for preliminary injunction, Plaintiff sought treatment for keloid scars and H. pylori. Defendant noted that there is no claim for H. pylori in this case. Defendant argued that allowing the record to develop on Plaintiff's claims for damages for past events will not interfere with any aspect of the appeal. Defendant argued that, whether or not Plaintiff prevails in obtaining injunctive relief will not affect the parties' ability to prevail on the underlying claims. Defendant contended that Plaintiff's Motion to Stay is unnecessary and should be denied.

This court agrees with Defendant's arguments and concludes that there is no basis for a stay in this case while the issue of injunctive relief proceeds in the Seventh Circuit.

**IT IS THEREFORE ORDERED THAT:**

(1) Defendant's Motion for Leave to File Motion to Dismiss (#58) is GRANTED. The clerk is directed to file the Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss attached to Defendant's Motion (#58).

(2) Plaintiff's Motion for Leave to Appeal in forma pauperis (#60) is GRANTED. However, Plaintiff is still responsible for payment of the filing fee. At this time, no partial filing prepayment is due. The agency having custody of Plaintiff shall begin forwarding monthly payments from Plaintiff's trust fund account to the clerk of court each time Plaintiff's amount exceeds \$10.00 until the statutory appeal fee of \$455.00 is paid in its

entirety. The clerk is directed to provide the United States Court of Appeals for the Seventh Circuit with a copy of this Order.

(3) Plaintiff's Motion to Stay Proceedings Pending Appeal (#62) is DENIED.

ENTERED this 12th day of December, 2013.

s/COLIN S. BRUCE  
U.S. DISTRICT JUDGE