

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

WALLACE GILBERT-MITCHELL, JR.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 06-cv-0741-MJR
)	
HARLEY G. LAPPIN, et al.,)	
)	
Defendants.)	

MEMORANDUM and ORDER

REAGAN, District Judge:

On December 4, 2008, Plaintiff Wallace Gilbert-Mitchell filed an objection to United States Magistrate Judge Philip M. Frazier's November 21, 2008 Order. Therein, Judge Frazier construed Gilbert-Mitchell's pleading as a motion for leave to amend because the pleading was incomplete. Judge Frazier granted Gilbert-Mitchell leave to file an amended complaint within 21 days.

Gilbert-Mitchell objects to Judge Frazier's ruling, contending that he was merely identifying John Doe and Jane Doe Defendants as required by the Court's September 9th Order and that he did not intend to file an amended complaint.

28 U.S.C. § 636 and LOCAL RULE 72.1 OF THE SOUTHERN DISTRICT OF ILLINOIS authorize United States Magistrate Judges to rule on motions and conduct proceedings in prisoner cases filed under **42 U.S.C. § 1983**. If a Magistrate Judge has ruled on a non-dispositive matter, any party may file for reconsideration of that ruling within ten days after issuance of the Magistrate Judge's Order. *See* **28 U.S.C. § 636; LOC. RULE 73.1(a)**.

In the case at bar, Gilbert-Mitchell filed his objection to Judge Frazier's ruling on

December 4, 2008. Therefore, the motion is timely filed. Accordingly, this District Judge shall reconsider the matter and set aside any portion of Judge Frazier's Order which is clearly erroneous or contrary to law. **28 U.S.C. § 636(b)(1)(A)**("A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."). The question, then, is whether Judge Frazier's November 21st Order construing Gilbert-Mitchell's motion as a motion for leave to file an amended complaint was clearly erroneous or contrary to law.

In the Scheduling and Discovery Order entered on September 9, 2008, Judge Frazier provided as follows: "Within 45 days, plaintiff shall identify John Doe and Jane Doe defendants by name *in a proposed Amended Complaint* and on USM-285 forms." (emphasis added). As Judge Frazier correctly pointed out, the pleading filed by Gilbert-Mitchell on October 29, 2008, was incomplete in that it named the John Doe defendants but did not identify the claims against them.

To comply with the Court's orders, Gilbert-Mitchell must file an amended complaint, containing a short and plain statement of his claims against each Defendant and a demand for judgment for the relief that he seeks. *See* **FED R. CIV. P. 8(a)**. The statement should be brief and contain only those claims which survived threshold review - for denial of mental health treatment and failure to protect against the remaining named defendants - Randy Davis (John Doe 1), Michael K. Nalley (John Doe 6), Harley Lappin and Harrell Watts.

Since Gilbert-Mitchell is proceeding *pro se*, the Court must liberally construe his complaint. *Marshall v. Knight*, **445 F.3d 965, 969 (7th Cir. 2006)** (citing *Haines v. Kerner*, **404 U.S. 519, 520 (1972)**). Gilbert-Mitchell misunderstood the requirements of the Court's September

9th order, and, consequently, the Court will allow him an additional 21 days within which to file an amended complaint as described herein.

Because the record before the Court does not indicate that Judge Frazier's November 21, 2008 order was clearly erroneous or contrary to law, the Court **DENIES** Plaintiff Gilbert-Mitchell's objection (Doc. 91) to Judge Frazier's ruling (Doc. 87). The Court grants Gilbert-Mitchell leave to file an amended complaint by January 26, 2009.

IT IS SO ORDERED.

DATED this 30th day of December, 2008

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge