Rocha v. Feinerman Doc. 7

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

LUIS ROCHA,	)
Plaintiff,	)
	)
vs.	) CIVIL NO. 09-cv-417-GPM
	)
DR. FEINERMAN,	)
	)
Defendant.	)

## **MEMORANDUM AND ORDER**

## **MURPHY, District Judge:**

This action is before the Court *sua sponte*. On December 10, 2008, Luis Rocha filed a civil action against several defendants including Defendant Dr. Feinerman. *See Rocha v. Scott*, Case No. 3:08-cv-866-GPM (S.D. III.). The Court construed Count 2 of that complaint as asserting a claim that Dr. Feinerman had deprived Rocha of adequate pain medication for his arm in violation of Rocha's Eighth Amendment rights. *Rocha v. Scott*, Case No. 08-cv-866 (S.D. III. Order filed May 7, 2009). The Court also found that Count 2 could not be dismissed pursuant to 28 U.S.C. § 1915A, but Rocha was advised that the Court intended to sever Count 2 into a separate case pursuant to *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), unless Rocha informed the Court that he wished to voluntarily dismiss Count 2. Rocha did not advise the Court that he wished to dismiss Count 2 and, therefore, a new case was opened for Count 2. *See Rocha v. Feinerman*, Case No. 3:09-cv-474 (S.D. III.).

In the meantime, though, it appears that Rocha commenced the instant action against Defendant Feinerman concerning his arm. This action is duplicative of Count 2 in Case No. 08-866,

which the Court later severed into Case No. 09-474. Accordingly, the instant action should be

dismissed as duplicative of Rocha's action in Case No. 09-474.

IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to file the complaint

in this action (Doc. 1) and the supplement to the complaint filed in this action (Doc. 5) as an

amended complaint and a supplement to the complaint, respectively, in Case No. 09-474.

Additionally, the Clerk of Court is **DIRECTED** to file Rocha's motion for appointment of

counsel in this action (Doc. 3) as a motion for appointment of counsel in Case No. 09-474.

Because Rocha will be granted leave to proceed in forma pauperis in Case No. 09-474, the

motion to proceed *in forma pauperis* in this case (Doc. 2) is **DENIED** as moot.

Rocha is **ADVISED** that all future documents and pleadings concerning his claim against

Dr. Feinerman should be filed in Case No. 09-474, not the instant case. The Clerk of Court is

**DIRECTED** to **CLOSE THIS CASE**.

IT IS SO ORDERED.

**DATED**: 6/30/09

G. Patrick Murphy

United States District Judge

s/ G. Patrick Murphy

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