

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RANDY RUSSELL YBARRA,

Plaintiff,

v.

CAUSE NO. 3:23-CV-80-DRL-MGG

WEXFORD OF INDIANA LLC
DIRECTOR, DIANE THEWS, RON
NEAL, ROBERT MEHL, DANIEL
ALTMAN, ROBERT CARTER, JR., and
NANCY MARTHAKIS,

Defendants.

OPINION AND ORDER

Randy Russell Ybarra, a prisoner without a lawyer, filed a motion asking to file an amended complaint to add state law claims. ECF 5. The court explained the motion was unnecessary because Federal Rule of Civil Procedure 15(a)(1) permitted him to amend as a matter of course. ECF 8. The amended complaint was docketed, but it does not include state law claims. ECF 9. It appears Mr. Ybarra wants to incorporate his Verified Notice of Small Claims into the amended complaint. This court's local rules do not permit that. N.D. Ind. L.R. 15-1(b) ("Amendments to a pleading: must reproduce the entire pleading as amended [and] must not incorporate another pleading by reference.").

This is not the only problem with the amended complaint. Mr. Ybarra is raising claims about glass in his right foot dating back to 2018. "Indiana's two-year statute of limitations . . . is applicable to all causes of action brought in Indiana under 42 U.S.C. § 1983." *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 894 (7th Cir. 2001).

He does not explain how his current claims are timely. He declares under penalty of perjury he has never sued anyone for this exact same event, but in *Ybarra v. Wexford, et al.*, 3:18-cv-404 DRL-MGG (N.D. Ind. filed May 30, 2018), he sued Dr. Marthakis for denying him adequate medical treatment for glass in his right foot. He now also alleges she conspired with others to conceal his medical condition, but the Rule 60(b) motion filed more than a year ago in that prior case raised the same argument. That case was dismissed on summary judgment and the Rule 60(b) motion denied.

The amended complaint in this case adds new parties, but it does not clearly explain what he believes each of them did or why he believes he can relitigate those untimely issues in this case. The amended complaint also raises claims based on events that happened after the prior lawsuit ended. It is possible these new events might be the basis for a claim if Mr. Ybarra provided more facts about what defendants were involved and how each of them (if more than Dr. Marthakis was involved) denied him his federally protected constitutional rights.

For these reasons, the court:

- (1) DIRECTS the clerk to place this cause number on a blank **Pro Se 14 (INND Rev. 2/20) Prisoner Complaint** form and send it to Randy Russell Ybarra; and
- (2) GRANTS Randy Russell Ybarra until **October 28, 2023**, to file an amended complaint on that form.

SO ORDERED.

September 27, 2023

s/ Damon R. Leichty
Judge, United States District Court