

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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LENNORA R. BANKS-DAVIS,

Plaintiff,

v.

**ORDER**

Civil File No. 16-1729 (MJD/FLN)

DAVID PAUL, Warden, et al.,

Defendants.

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Lenora R. Banks-Davis, pro se.

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The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel filed December 13, 2016. Plaintiff Lenora R. Banks-Davis sent a letter to the Court requesting an extension to file her response until January 3, 2017. [Docket No. 25] The Court grants that request. In response to the Report and Recommendation, on January 5, Plaintiff filed a Second Amended Complaint. [Docket No. 26] Plaintiff did not file objections to the Report and

Recommendation. The Court will consider the Second Amended Complaint as a request to amend Plaintiff's Amended Complaint.

Leave to amend a complaint shall be given "freely . . . when justice so requires," Fed. R. Civ. P. 15(a)(2), and a court must construe a pro se complaint liberally, Atkinson v. Bohn, 91 F.3d 1127, 1129 (8th Cir. 1996). However, "a court may deny the motion based upon a finding of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies in previous amendments, undue prejudice to the non-moving party, or futility." Baptist Health v. Smith, 477 F.3d 540, 544 (8th Cir. 2007). In this case, the Court concludes that Plaintiff's motion to amend is futile because the proposed Second Amended Complaint fails to state a claim upon which relief may be granted.

The proposed Second Amended Complaint names the following Defendants: Attorney General Loretta Lynch, FCI Waseca Warden David Paul, Interim Director of the Bureau of Prisons Thomas Kaine, and former Bureau of Prisons Director Charles Samuels. Although Plaintiff also wrote "\* additional sheet attached," no other Defendants are named anywhere else in the filing. Plaintiff's Second Amended Complaint requests "proper medical treatment" and asserts that the prison grievance procedure is not "meaningful and functional."

(Second Am. Compl. at 3, 5.) The allegations regarding the prison grievance procedure are vague and conclusory. Plaintiff's Second Amended Complaint does provide details regarding her medical treatment. However, it does not allege that any of the named Defendants were personally involved in or had direct responsibility for incidents that injured Plaintiff. The only individuals alleged to have ignored Plaintiff's medical issues are Dr. Luring and Dr. Harvey. (Second Am. Compl. at pp. 9, 16.) Neither Luring nor Harvey are named as Defendants in the Second Amended Complaint. Harvey was named as a Defendant in previous complaints; Luring has not ever been named. Additionally, Plaintiff fails to allege that they acted with a mental state akin to criminal recklessness. Thus, the Court denies Plaintiff's request to file her Second Amended Complaint as futile.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Noel filed December 13, 2016, and denies Plaintiff's request to file the proposed Second Amended Complaint.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED:**

1. Plaintiff Lennora R. Banks-Davis's letter request for an extension of the deadline to file an objection to the Report and Recommendation until January 3, 2017 [Docket No. 25] is **GRANTED**.
2. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Franklin L. Noel filed December 13, 2016 [Docket No. 24].
3. This action is **SUMMARILY DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915A.
4. Plaintiff's motions for emergency relief [Docket Nos. 3, 22] are **DENIED**.
5. Plaintiff's application to proceed in forma pauperis [Docket No. 2] is **DENIED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: February 2, 2017

s/ Michael J. Davis

Michael J. Davis

United States District Court