

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DEVIN DESHAUN FOUNTAIN, )  
                                  )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                             )                                    No. 1:13CV00019 SNLJ  
                                  )  
                                  )  
ROBERT WILSON, et al.,     )  
                                  )  
                                  )  
Defendants.                    )

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's second post-dismissal motion to file an amended complaint. Because plaintiff is a prisoner and is proceeding in forma pauperis, the Court reviewed his original complaint under 28 U.S.C. § 1915(e) and dismissed it for failure to state a claim upon which relief can be granted. Plaintiff seeks to bring the same claims in his amended complaint and has named additional defendants as being responsible for those claims.

Although the Federal Rules have a liberal policy towards amendments, “[p]ost-dismissal motions to amend are disfavored,” In re Medtronic, Inc., Sprint Fidelis Leads Products Liability Litigation, 623 F.3d 1200, 1208 (8th Cir. 2010), and amendments should not be granted when they would be frivolous or “futile.” See Foman v. Davis, 371 U.S. 178, 182 (1962); Coleman v. Ramada Hotel Operating Co., 933 F.2d 470, 473 (7th Cir. 1991). In this action, it would be futile to allow plaintiff

to file his amended complaint because it contains the same defects as the original complaint. Consequently, the motion is denied.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's second motion to file an amended complaint in this closed action [ECF No. 16] is **DENIED**.

**IT IS FURTHER ORDERED** that plaintiff's motion to appoint counsel [ECF No. 17] is **DENIED** as moot.

Dated this 22nd day of April, 2013.



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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE