

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Stanley T. Richardson,	:	
	:	Case No. 2:12-cv-0793
Plaintiff,	:	
	:	JUDGE GREGORY L. FROST
v.	:	
	:	Magistrate Judge Kemp
OP & CMIA, et al.,	:	
	:	
Defendants.	:	

ORDER

This case is before the Court to consider plaintiff's motions to transfer and to amend (Doc. 35 and 36). For the following reasons, both motions will be denied.

Mr. Richardson amended his complaint in April of this year. It is currently subject to a motion to dismiss. He has responded to that motion.

In the two motions which are the subject of this order, which are almost identical, Mr. Richardson asks for leave to amend again to clarify his allegations. However, he does not explain what clarifications he has in mind, nor did he attach a proposed amended complaint. Defendants have opposed both motions, noting these facts and also arguing that since the amended complaint is, in their view, subject to dismissal, any clarification of it would simply be futile.

There is no question that Rule 15(a) generally favors allowing parties to amend their pleadings in order to promote the goal of deciding cases on their merits. However, in Bliss v. Corrections Corp. of America, 8 Fed. Appx. 320 (6th Cir. March 15, 2001), the Court of Appeals dealt with a similar situation and found that Rule 15(a) did not require the court to permit an amendment. In upholding the trial court's denial of the

plaintiff's motion for leave to file an amended complaint, the Court of Appeals said:

[Plaintiff] failed to demonstrate the need for amendment or otherwise explain his reasons for requesting leave to amend. [He] did not indicate how amendment would cure the deficiencies of his complaint, ... or tender a proposed amended complaint for the district court's review. Under these circumstances, justice does not require that amendment occur.

This Court has followed that same practice. For example, as noted in Rogers v. Isler, 2005 WL 3776350, *1 (S.D. Ohio June 20, 2005), the District Judge had "denied plaintiffs' motion for leave to amend the complaint on the ground that plaintiffs had not tendered the proposed amended complaint." See also Nuovo v. Ohio State University, 2009 WL 2591687, *2 (S.D. Ohio Aug. 20, 2009)(describing the Magistrate Judge's "practice ... to consider a motion for leave to amend a pleading only when the proposed amended complaint is tendered with the motion"). Otherwise, the Court cannot properly evaluate whether any of the proposed new claims, or clarifications of existing claims, would be futile, or whether they would cause some prejudice to the opposing party.

Mr. Richardson will not be harmed by the denial of his motions. If he simply wishes to clarify his prior complaint, he has had ample opportunity to explain that pleading in the response he filed to defendants' motion to dismiss. Further, a ruling on that motion will be a strong indication of whether any further amendments would be futile. Finally, if his amended complaint does survive the motion in whole or in part, he will then be in a better position to determine if any further amendment is needed, and he may make such a motion and attach his proposed amended complaint to that motion. As the record now stands, however, he has not demonstrated good reason to amend his complaint yet again, and the Court denies his two motions (Docs.

35 and 36) which request leave to do so.

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect, notwithstanding the filing of any objections, unless stayed by the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.3.

/s/ Terence P. Kemp
United States Magistrate Judge

