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

Barnett Glover,	:	
Plaintiff,	:	Case No. 2:13-cv-976
v.	:	JUDGE GREGORY L. FROST Magistrate Judge Kemp
Dr. Kirsher, et al.,	:	
Defendants.	:	

ORDER

Plaintiff Barnett Glover has filed a motion for leave to supplement his complaint. In his motion, Mr. Glover states that he would like to add as exhibits to his complaint some medical records he recently obtained. He also states that he would like to submit a copy of the interrogatories he has received from the defendants. He does not indicate whether he seeks to make the interrogatories an exhibit to the complaint. He has not provided copies of either the medical records or the interrogatories. Defendants have not responded to this motion.

To the extent that Mr. Glover seeks to add exhibits to his complaint, the Court construes his motion as a motion for leave to amend the complaint. Consequently, the Court will consider the motion under Fed.R.Civ.P. 15.

I. Legal Standard

Fed.R.Civ.P. 15(a)(2) states that when a party is required to seek leave of court in order to file an amended pleading, "[t]he court should freely give leave when justice so requires." The United States Court of Appeals for the Sixth Circuit has spoken extensively on this standard, relying upon the decisions of the United States Supreme Court in Foman v. Davis, 371 U.S. 178 (1962) and Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971), decisions which give substantial meaning to

the phrase "when justice so requires." In Foman, the Court indicated that the rule is to be interpreted liberally, and that in the absence of undue delay, bad faith, or dilatory motive on the part of the party proposing an amendment, leave should be granted. In Zenith Radio Corp., the Court indicated that mere delay, of itself, is not a reason to deny leave to amend, but delay coupled with demonstrable prejudice either to the interests of the opposing party or of the Court can justify such denial.

Expanding upon these decisions, the Court of Appeals has noted that:

> [i]n determining what constitutes prejudice, the court considers whether the assertion of the new claim or defense would: require the opponent to expend significant additional resources to conduct discovery and prepare for trial; significantly delay the resolution of the dispute; or prevent the plaintiff from bringing a timely action in another jurisdiction.

Phelps v. McClellan, 30 F.3d 658, 662-63 (6th Cir. 1994) (citing Tokio Marine & Fire Insurance Co. v. Employers Insurance of Wausau, 786 F.2d 101, 103 (2d Cir. 1986)). See also Moore v. City of Paducah, 790 F.2d 557 (6th Cir. 1986); Tefft v. Seward, 689 F.2d 637 (6th Cir. 1982). Stated differently, deciding if any prejudice to the opposing party is “undue” requires the Court to focus on, among other things, whether an amendment at any stage of the litigation would make the case unduly complex and confusing, see Duchon v. Cajon Co., 791 F.2d 43 (6th Cir. 1986) (per curiam), and to ask if the defending party would have conducted the defense in a substantially different manner had the amendment been tendered previously. General Electric Co. v. Sargent and Lundy, 916 F.2d 1119, 1130 (6th Cir. 1990); see also Davis v. Therm-O-Disc, Inc., 791 F. Supp. 693 (N.D. Ohio 1992).

The Court of Appeals has also identified a number of additional factors which the District Court must take into

account in determining whether to grant a motion for leave to file an amended pleading. They include whether there has been a repeated failure to cure deficiencies in the pleading, and whether the amendment itself would be an exercise in futility. Robinson v. Michigan Consolidated Gas Co., 918 F.2d 579 (6th Cir.1990); Head v. Jellico Housing Authority, 870 F.2d 1117 (6th Cir.1989). The Court may also consider whether the matters contained in the amended complaint could have been advanced previously so that the disposition of the case would not have been disrupted by a later, untimely amendment. Id.

II. Analysis

In light of the absence of any objection by defendants, the Court finds no prejudice would result from making Mr. Glover's medical records part of the complaint. Although Mr. Glover has not provided copies of the medical records he intends to include, the Court notes that he describes the records as evidence he needs to fully litigate his claims. The claims in his complaint relate to one discrete incident. Specifically, the claims relate to the medical care he received after severing his right ring finger at the knuckle in a "punch press machine" while working at the Chillicothe Correctional Institution. Consequently, to the extent that Mr. Glover seeks to amend his complaint to add as exhibits the records of his medical care arising from this specific event, his motion will be granted. Mr. Glover will be directed to file an amended complaint consistent with this order within fourteen days.

With respect to the issue of interrogatories from the defendants, however, Fed.R.Civ.P. 5(d)(1) provides, in part, that "discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, ..." To the extent that Mr. Glover would like to rely on these interrogatories in connection

with a dispositive motion either that he intends to file or in opposition to such a motion by defendants, he will be permitted to file the interrogatories then. However, Mr. Glover should file them as exhibits to any motion or response; the interrogatories should not be submitted as independent filings.

III. Conclusion

For the reasons set forth above, plaintiff's motion to supplement his complaint, construed as a motion for leave to amend (Doc.33), is granted in part and denied and part. The motion is granted to the extent that, within fourteen days, plaintiff shall file an amended complaint with his medical records, as described in this order, attached as exhibits. The motion is denied to the extent that plaintiff seeks to submit interrogatories.

IV. Motion for Reconsideration

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. 14-01, pt. IV(C)(3)(a). 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 even if a motion for reconsideration has been filed unless it is stayed by either the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.3.

/s/ Terence P. Kemp
United States Magistrate Judge