

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARTURO LABOY, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-248 JJF
 :
 JANE DOE, :
 :
 Defendant. :

Arturo Laboy, Wilmington, Delaware.
Pro se Plaintiff.

Kevin J. Connors, Esquire, of MARSHALL, DENNEHEY, WARNER, COLEMAN
& GOGGIN, Wilmington, Delaware.
Attorney for Andrea Golden.

MEMORANDUM OPINION

December 17, 2004
Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is Plaintiff's Motion to Amend Complaint (D.I. 52). For the reasons discussed, Plaintiff's Motion will be denied.

Background

On April 4, 2002, Plaintiff Arturo Laboy, an individual incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware, filed a complaint pursuant to 42 U.S.C. § 1983. (D.I. 2.) Laboy alleged that Defendants failed to adequately treat a rash he contracted from the DCC's laundry detergent.

On February 26, 2004, the Court granted Summary Judgment to all Defendants except Jane Doe. On March 3, the Court ordered Laboy to show cause within twenty days as to why the matter should not be dismissed as to Defendant Jane Doe (D.I. 51). On March 23, 2004, Laboy filed an Affidavit replacing Jane Doe with Andrea Golden, a nurse at the DCC. (D.I. 52.) The Court construes this Affidavit as a Motion to Amend Complaint.

Parties' Contentions

By his motion, Laboy contends that he may replace the name Jane Doe on the Complaint with the real party Andrea Golden. Laboy contends that Golden, a nurse at the DCC, examined his arms and recognized his serious condition, but failed to put him on the "Doctor's list." (D.I. 52.) Laboy contends that Golden's omission caused his skin condition to worsen.

In response, Golden contends that Laboy's proposed amendment

cannot relate back to the original complaint because Laboy was aware of Golden's identity when he filed his original complaint. Golden further contends that, in light of the Court's Order of Summary Judgment, Laboy's motion should be denied as futile.

Discussion

"Replacing the name John Doe [or Jane Doe] with a party's real name amounts to the changing of a party or the naming of a party under [Federal Rule of Civil Procedure] 15(c)." Gavin v. City of Philadelphia, 354 F.3d 215, 220 (3d Cir. 2003). As a result, "the amended complaint will relate back only if the three conditions specified in that rule are satisfied." Id. (citing Varlack v. SWC Caribbean, Inc., 550 F.2d 171, 174 (3d Cir. 1977)). First, "the claim or defense asserted [against the new party] arose out of the conduct transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c)(3), 15(c)(2). Second, "within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment [] has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits ..." Fed. R. Civ. P. 15(c)(3)(A). Third, the party to be brought in by amendment "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c)(3)(B).

The third condition, 15(c)(3)(B), requires, inter alia, that the plaintiff's initial omission of the newly named party was a mistake. Thus, "an amended complaint will not relate back if the plaintiff had been aware of the identity of the newly named parties when she filed her original complaint and simply chose not to sue them at that time." Garvin, 354 F.3d at 221-222.

The Court finds that Plaintiff's motion to amend to add Golden as a defendant fails to meet the requirements of Rule 15(c). Specifically, the Court finds that Laboy has failed to establish, pursuant to 15(c)(3)(B), that his omission of Golden's name from the original Complaint was a mistake. Rather, it appears that Laboy was aware of the identity of Andrea Golden at the time he filed the Complaint. For example, Laboy twice references "nurse Andrea" in his Medical Grievance form, which he composed on January 30, 2001, over two months before filing his Complaint. (D.I. 54, Ex. A.) Once a party makes such an intentional omission, a later attempt to add that party by amendment cannot relate back to the original Complaint. For these reasons, the Court will deny Plaintiff's Motion to Amend Complaint (D.I. 52).

Conclusion

For the reasons discussed, the Court will deny Plaintiff's Motion to Amend Complaint (D.I. 52).

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ORDER

At Wilmington, this 17th day of December 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that

- 1) Plaintiff's Motion to Amend Complaint (D.I. 52) is **DENIED**;
- 2) Because there are no other pending matters, this case is dismissed.

December 17, 2004
DATE

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE