

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANLEY YELARDY,)
)
 Plaintiff,)
)
 v.) Civil Action No. 03-1032 GMS
)
 STANLEY TAYLOR, RAPHAEL)
 WILLIAMS, and M. JANE BRADY)
)
 Defendants.)
)

ORDER

WHEREAS, on November 12, 2003, Stanley Yelardy (“Yelardy”) filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983;

WHEREAS, on August 16, 2004, Yelardy filed a motion to amend (D.I. 26) pursuant to Rule 15 of the Federal Rules of Civil Procedure;

WHEREAS, the motion seeks to dismiss all claims against M. Jane Brady, without prejudice, and add defendants to the lawsuit;¹

WHEREAS, Federal Rule of Civil Procedure 15(a) states that leave to amend a complaint should be “freely given when justice so requires;” and

WHEREAS, on January 25, 2005, the defendants informed the court that they do not oppose Yelardy’s motion to amend;

¹ Yelardy seeks to add: Sergeant Joseph Medford; correctional officer Mark Cannon, Lieutenant Beatrice McClain; the Quick Response Team, consisting of 7 unidentified correctional officers; Lieutenant P. Sheets; Deputy Warden Perry Phelps; Lieutenant Joseph Sabato; correctional officer Courtney Rivera; and the Delaware Department of Corrections. The amended complaint seeks to hold the additional defendants liable in their official and individual capacities.

IT IS HEREBY ORDERED that:

1. The plaintiff's motion to amend (D.I. 26) is GRANTED.
2. All claims against the defendant M. Jane Brady are DISMISSED without prejudice.

IT IS FURTHER ORDERED that:

1. The Clerk of the Court shall cause a copy of this order to be mailed to the plaintiff.
2. Pursuant to the Federal Rules of Civil Procedure Rule 4(c)(2) and (d)(2), the plaintiff shall complete and return to the Clerk of the Court an **original** "U.S. Marshal-285" form for **each** defendant, as well as for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). Additionally, the plaintiff shall provide the court with one copy of the complaint (D.I. 2) and the amended complaint (D.I. 26) for service upon each defendant. Furthermore, the plaintiff is notified that the United States Marshal will not serve the complaint and amended complaint until all "U.S. Marshal 285" forms have been received by the Clerk of the Court. Failure to provide the "U.S. Marshal 285" forms for each defendant and the attorney general within 120 days of this order may result in the amended complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).
3. Upon receipt of the form(s) required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the complaint (D.I. 2), the amended complaint (D.I. 26), this Order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon each of the defendants so identified in each 285

form.

4. Within thirty (30) days from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Federal Rule of Civil Procedure 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.
5. Pursuant to Federal Rule of Civil Procedure 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within sixty (60) days from the date upon which the complaint, this Order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.
6. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel. The clerk is instructed not to accept any such document unless accompanied by proof of service.

Dated: March 10, 2005

_____/s/_____
UNITED STATES DISTRICT JUDGE