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United States District Court,
E.D. Michigan.

Linda NUNN, et al., Plaintiffs,
v.
Kenneth MCGINNIS, et al., Defendants.

No. 96–CV–71416. | June 16, 1997.

Attorneys and Law Firms

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Opinion

OPINION AND ORDER GRANTING PLAINTIFFS' MOTION TO AMEND

OMEARA, J.

***1** Before the court is Plaintiffs' motion to amend their complaint, which was filed April 29, 1997. Defendants filed a response and a supplemental response; Plaintiffs submitted a reply. The court heard oral argument on June 12, 1997, and took the matter under advisement. For the reasons expressed in this opinion, the court GRANTS Plaintiffs' motion.

BACKGROUND

In their motion, Plaintiffs state that they wish to add Nichole Morrison and Jacquelyn Urbina Myrick as plaintiffs and Officer Fulmer as a defendant. Plaintiffs also seek to assert additional claims on behalf of Plaintiff Stacy Barker. Plaintiffs allege that Ms. Morrison was raped by Officer Fulmer and that Ms. Myrick has been threatened and retaliated against by officers at the Scott Facility for pursuing a sexual assault complaint against a guard. In their reply, Plaintiffs note that they intend to add a number of plaintiffs who allegedly have been physically and/or sexually assaulted by male officers or have suffered privacy violations while housed at Florence Crane or Scott correctional facilities.

Defendants respond that the court should not allow Plaintiffs to amend their complaint to add new parties and claims because the new claims arose after the effective date of the PLRA; thus, according to Defendants, the new plaintiffs must exhaust administrative remedies before filing suit. In addition, Defendants claim that they would be prejudiced if Plaintiffs were allowed to amend because they would need to commit more resources to discovery and the resolution of the case would be delayed.

LAW AND ANALYSIS

According to Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend one's complaint "shall be freely given when justice so requires." When considering a motion to amend, the court should take into account factors such as whether the amendment would cause prejudice to the defendants or undue delay in the proceeding. *See Foman v. Davis,* 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The court should not deny a motion for leave to amend unless there is a "significant showing of prejudice." *Security Ins. Co. of Hartford v. Kevin Tucker & Assocs., Inc.,* 64 F.3d 1001, 1009 (6th Cir.1995). Further, "[d]elay that is neither intended to harass nor causes any ascertainable prejudice is not a permissible reason, in and of itself to disallow amendment of a pleading." *Tefft v. Seward,* 689 F.2d 637, 640 n. 2 (6th Cir.1982).

Defendants have not demonstrated that they would suffer significant prejudice if Plaintiffs are permitted to amend at this time. Although Plaintiffs filed their complaint more than a year ago, Plaintiffs assert that virtually no discovery has been taken to date. The court acknowledges that discovery is in its nascent stage and agrees that the addition of new parties and claims will not seriously hinder the progress of this litigation. At this point, the court also believes that allowing the amendment of the complaint, rather than requiring the filing of a separate suit, is the more efficient route for all involved.

***2** Because Defendants have not shown that they will be significantly prejudiced if Plaintiffs are allowed to amend, the primary issue is whether the PLRA's exhaustion requirement precludes Plaintiffs from adding new claims. The statute provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a) (West Supp. September, 1996). In a February 4, 1997 opinion, this court ruled that this exhaustion requirement did not apply to Plaintiffs because Plaintiffs' complaint was filed before the effective date of the PLRA. *See also Wright v. Morris,* 111 F.3d 414, 418 (6th Cir.1997) ("[T]he text of the PLRA indicates that the new administrative exhaustion requirement applies only to cases filed after the Act's passage."). The parties have not cited cases where, as here, a plaintiff seeks to add new claims after the effective date of the PLRA to a complaint that was filed before that date. Read literally, the statute applies only to the filing of actions, not the assertion of additional claims. However, Plaintiffs' new claims involve new parties and some arose after the effective date of the act. *See* Pls.' Reply, Ex. B.

Even if the new exhaustion requirement were found to apply to Plaintiffs' new claims, the requirement does not apply to claims for damages, as opposed to claims for injunctive relief. Under the previous version of 42 U.S.C. § 1997e, courts did not require prisoners to exhaust administrative remedies when they were seeking damages, reasoning that prisoners could not obtain such relief through the grievance system. *See, e.g., Prunty v. Branson,* 1993 WL 328037 (6th Cir. Aug.27, 1993). This court will interpret the new version of § 1997e in the same fashion, because the statute only requires exhaustion of "such administrative remedies as are available."[1] Because damages remain unavailable through the grievance system in Michigan prisons, the court will not require Plaintiffs to exhaust administrative remedies before asserting their new claims for damages.

As for the claims for injunctive relief, if any, Plaintiffs will be required to exhaust. In its February 4, 1997 order, this court directed that Plaintiffs exhaust administrative remedies for their claims for injunctive relief, to the extent that such claims are properly "grievable." Whether the old or new version of § 1997e is applied, the same will be true for Plaintiffs' new claims for injunctive relief.

Accordingly, in keeping with the general rule of liberality in allowing amendments, the court will permit Plaintiffs to state additional claims on behalf of Stacy Barker and to add Nichole Morrison, Jacquelyn Urbina Myrick, and Officer Fulmer as parties. The court cautions the parties that discovery should proceed according to the agreed schedule and that the court will be less inclined to permit the addition of further parties or claims that would significantly impede the progress of this litigation.

ORDER

***3** IT IS HEREBY ORDERED that Plaintiffs' April 29, 1997 motion to amend their complaint is GRANTED.

Footnotes

1 The previous version required "exhaustion of such plain, speedy, and effective administrative remedies as are available." 42 U.S.C. § 1997e(a)(1) (West 1994).