

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Payton v. Montgomery

Payton · No. 2:22-cv-1177 AC P · Decided July 21, 2025

OPINION

(PC) Payton v. Montgomery

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 NORBERT M. PAYTON, No. 2:22-cv-1177 AC P

11 Plaintiff,

12 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

13 MONTGOMERY,

14 Defendant. 15

16 Plaintiff is a state prisoner proceeding without counsel in a civil rights action under 42 U.S.C.
17 § 1983. Pending before the court is plaintiff's declaration and motion for relief. ECF No. 37. 18

I. Background 19 Upon screening of the complaint, the undersigned found that plaintiff had
sufficiently 20 stated Eighth Amendment sexual assault and deliberate indifference to safety
claims against 21 defendant Montgomery, based on alleged incidents at California Medical
Facility ("CMF"). ECF

22 Nos. 1, 12. After defendant waived service, the court issued a post screening Alternative
Dispute

23 Resolution ("ADR") referral and stayed the case. ECF No. 20. A settlement conference was set
24 for January 10, 2025. ECF No. 23. 25 On the day of the settlement, the court was informed that
plaintiff refused to attend the 26 settlement conference. ECF No. 26. Plaintiff was ordered to show
cause why she failed to 27 participate in the settlement conference and comply with this court's
order. ECF No. 27. 28 Plaintiff filed a response indicating that she failed to attend the January 10,
2025, settlement 1 conference because she refused to be escorted to the settlement conference by
two officers who 2 had allegedly assaulted her in December 2024. ECF No. 29. Plaintiff asked for
a new settlement 3 date. Id. at 3. The court vacated the order to show cause and granted plaintiff's
request for a new 4 settlement date. ECF No. 30. 5 A settlement conference was set for April 18,
2025. ECF No. 31. Once again, plaintiff 6 failed to attend the settlement conference. ECF No. 33.

In light of this, the court lifted the stay 7 and ordered defendants to respond to the complaint. ECF nos. 34, 35. 8 On May 12, 2025, defendants filed a motion to dismiss. ECF No. 36. A week later, 9 plaintiff filed a declaration regarding the settlement conference and a motion for relief. ECF No. 10 37. Defendants filed an opposition, which construed plaintiff's filing as a motion for a 11 preliminary injunction. ECF No. 38. On June 25, 2025, the court received plaintiff's change of 12 address. ECF No. 39. Plaintiff was transferred from Kern Valley State Prison ("KVSP") to Mule 13 Creek State Prison ("MCSP"). 14 II. Plaintiff's Declaration and Motion for Relief 15 Plaintiff declares that defendants prevented her from attending the April 18, 2025, 16 settlement conference by failing to give her state issued clothing, and then denying her the ability 17 to attend the settlement conference on the grounds that she was not wearing state issued clothing. 18 ECF No. 37. Plaintiff states that the officers refused to take her to the settlement conference even 19 after she held the yard hostage, demanding she be allowed to attend. Id. at 2. 20 Plaintiff also declares that on April 27, 2025, several officers attack and assaulted her in 21 her cell. Id. They also destroyed her legal paperwork and other property, and placed plaintiff in 22 administrative segregation ("Ad seg") based on false charges. Id. 23 Plaintiff claims that she is without legal supplies needed to adequately represent herself 24 and correspond with the court, and that KVSP officers have denied her access to the law library. 25 Plaintiff asks the court to force the California Department of Corrections and Rehabilitation 26 ("CDCR") and/or KVSP to honor plaintiff's right to access the law library. Plaintiff indicates she 27 will be filing a motion to appoint counsel soon because she cannot represent herself under these 28 conditions. Id. at 4. 1 III. Defendants' Opposition 2 Defendants respond that plaintiff's declaration admits she refused to comply with lawful 3 orders, which led to her failure to appear for the settlement conference. ECF No. 38 at 2. With 4 respect to plaintiff's request for order against CDCR and/or KVSP, defendants argue that it is 5 essentially a motion for a preliminary injunction and must be denied because plaintiff has not 6 shown she is entitled to a preliminary injunction, the court does not have jurisdiction over KVSP 7 officers as they are not parties to this action and therefore cannot be enjoined, and plaintiff must 8 first seek administrative remedies before filing a new suit regarding these new unrelated claims. 9 Id. at 2-4.

10 IV. Discussion 11 As a preliminary matter, because early ADR is not mandatory and there is no outstanding 12 order to show cause regarding plaintiff's failure to attend the second settlement conference, there 13 is no need for the court to address any of the parties' arguments raised with respect to this issue. 14 To the extent plaintiff's declaration attempts to add claims against CDCR, KVSP, and/or 15 KVSP officers, she should not be allowed to. The time to amend the complaint as a matter of 16 course has expired, see Fed. R. Civ. P. 15(a)(1), and the opposing party has not provided written 17 consent to amendment. Fed. R. Civ. P. 15(a)(2). While the court may freely grant leave to 18 amend "when justice so requires," the Prison Litigation Reform Act ("PLRA") and rules 19 concerning joinder of parties and claims counsel against or do not allow these amendments for the 20 reasons that follow. 21 A plaintiff may properly assert multiple claims

against a single defendant in a civil action. 22 Fed. Rule Civ. P. 18. In addition, a plaintiff may join multiple defendants in one action where 23 “any right to relief is asserted against them jointly, severally, or in the alternative with respect to 24 or arising out of the same transaction, occurrence, or series of transactions and occurrences” and 25 “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 26 20(a)(2). However, unrelated claims against different defendants must be pursued in separate 27 lawsuits. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended “not only 28 to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to 1 ensure that prisoners pay the required filing fees—for the Prison Litigation Reform Act (“PLRA”) 2 limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment 3 of the required fees. 28 U.S.C. § 1915(g).” *Id.* 4 Claims against officers at KVSP for interfering with plaintiff’s access to the courts, for 5 assault, deprivation of property, and/or placement in administrative segregation, arising from 6 events which occurred three years after the alleged sexual assault and deliberate indifference in 7 this case, are not based on the same facts and/or against the same defendant and therefore cannot 8 be joined in this action. Moreover, the court agrees with defendants that if the court allowed 9 plaintiff to add these claims in the present case, it would impermissibly permit plaintiff to 10 circumvent the PLRA’s express limitations. 11 To the extent that plaintiff seeks a preliminary injunction against CDCR and/or KVSP, the 12 undersigned recommends the court deny plaintiff’s motion. A district court has no authority to 13 grant relief in the form of a preliminary injunction where it has no jurisdiction over the parties. 14 *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004) (per curiam) (“A federal court may 15 issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction 16 over the claim; it may not attempt to determine the rights of persons not before the court.”) 17 (citation omitted). The only defendant in this case is defendant Montgomery, a correctional 18 officer employed at the CMF on or about April 16, 2022. See ECF No. 12 at 1-2. Absent facts 19 showing that CDCR and/or KVSP is acting “in active concert or participation” with defendant 20 Montgomery, the court does not have jurisdiction over those nondefendants. See Fed. R. Civ. P. 21 65(d)(2); *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 112 (1969) (“[A] nonparty 22 with notice cannot be held in contempt until shown to be in concert or participation.”). 23 Moreover, “[w]hen a plaintiff seeks injunctive relief based on claims not pled in the 24 complaint, the court does not have the authority to issue an injunction” unless there is a nexus 25 between the injury claimed in the motion and the underlying complaint. *Pacific Radiation Oncology, LLC, v. Queen’s Med. Ctr.*, 810 F.3d 631, 633, 636 (9th Cir. 2015). As discussed 27 above, it appears plaintiff is seeking injunctive relief based on alleged recent incidents at KVSP, 28 which were not pled in the complaint. Because there is no relation between the recent injury 1 claimed in the motion—assault, deprivation of property and access to the law library, and 2 placement in administrative segregation—and the complaint for sexual assault and deliberate 3 indifference, the court lacks authority to issue an injunction. 4 Additionally, plaintiff’s motion, to the extent it seeks access to

the law library at KVSP, is 5 denied as moot because plaintiff has been transferred out of KVSP. Nelson v. Heiss, 271 F.3d 6 891, 897 (9th Cir. 2001) (the transfer of an inmate to a new prison will usually moot a challenge 7 to conditions at a “particular facility”). However, the court construes plaintiff’s notice of change 8 of address and assertions regarding lack of access to the law library at MCSP due to a lockdown, 9 ECF No. 39, as a motion for an extension of time, and will grant this request. Plaintiff will be 10 provided thirty days from the date of this order to file an opposition to defendant’s motion to 11 dismiss (ECF No. 36). 12 V. Conclusion 13 Accordingly, IT IS HEREBY ORDERED that: 14 1. Plaintiff’s motion for relief (ECF No. 37) is construed, in part, as a motion to access 15 the law library at KVSP and is denied as moot. 16 2. Plaintiff’s notice of change of address (ECF No. 39) is construed as a request for an 17 extension of time and granted. Within thirty days of the date of this order, plaintiff shall file and 18 serve an opposition to the motion to dismiss or statement of non-opposition. Failure to comply 19 with this order will result in a recommendation that this action be dismissed without prejudice for 20 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). 21 3. The Clerk of the Court shall randomly assign a United States District Judge to this 22 action. 23 IT IS HEREBY RECOMMENDED that plaintiff’s declaration and motion for relief 24 (ECF No. 37) be construed in part as a motion to amend the complaint and for a preliminary 25 injunction and, as such, be denied. 26 These findings and recommendations are submitted to the United States District Judge 27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 28 after being served with these findings and recommendations, plaintiff may file written objections 1 | with the court. The document should be captioned “Objections to Magistrate Judge’s Findings 2 || and Recommendations.” Plaintiff is advised that failure to file objections within the specified 3 || time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 4 | (9th Cir. 1991). 5 || DATED: July 21, 2025 ~ 6 Htttenr— Lhor—e_

ALLISON CLAIRE

7 UNITED STATES MAGISTRATE JUDGE

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