

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RICHARD A. MILLER,

Plaintiff,

v.

CASE NO. 07-3221-SAC

DON JORDAN, et al.,

Defendants.

O R D E R

Plaintiff submitted for filing this "Civil Rights Complaint" with no case number in the caption, and himself named as the only plaintiff. He also submitted motions for leave to proceed in forma pauperis and for appointment of counsel.

Plaintiff alleges he is "incarcerated at the Larned State Hospital, Larned, Kansas (LSH) under the Kansas Sexually Violent Predator Act (KSPP)." He asserts jurisdiction under 28 U.S.C. "1343-1331," and that this court has jurisdiction over his state law claims. Plaintiff names as defendants Don Jordan, Secretary of SRS and LSH Administrator of KSPP; Phill Leford, LSH Polygrapher for the KSPP, and John and Jane Does. He sets forth personal allegations against defendants in his complaint and seeks nominal damages and costs. He also seeks declaratory and injunctive relief, and moves in his complaint for class certification, and appointment of class action counsel.

In the second paragraph of his complaint, Mr. Miller alleges that he "seeks to join" Case No. 05-3181-JAR. However, the court takes judicial notice that Montero v. Kerry, Case No. 05-3181 (Apr. 29, 2005) is closed and was a habeas corpus action unrelated to

plaintiff's claims.

The clerk of the court reasonably filed plaintiff's complaint and motions as a new case, given the caption and citation to a closed case. However, the court has recently received a letter from plaintiff which was filed by the clerk as plaintiff's "Motion for Joinder, Motion to Appoint Counsel, and Motion to Certify Class" (Doc. 5), in which plaintiff states his complaint was a request to join case number 05-3181-JAR, and that he does not understand why a new and different case number was assigned.

As a threshold matter, the court denies plaintiff's request for class certification in this new, separate action, for the reason that he does not allege the prerequisites to a class action set forth in Rule 23, FRCP. Nor does he provide information which would allow this court to order class certification as provided in subsection (c) of Rule 23. Since the court denies certification at this time, it also denies plaintiff's request for appointment of class counsel herein.

The court finds that plaintiff's complaint and motions were filed as a separate lawsuit, when plaintiff's intent was to file a Motion for Permissive Joinder in Boatright v. Larned State Hospital, et al., Case No. 05-3183. Part of the reason for the confusion herein is plaintiff's citation of a closed, unrelated case rather than the Boatright case. Plaintiff is directed to place the correct caption and case number on any future pleadings he submits.

The court finds that plaintiff did not intend to file this separate action, and this action should be dismissed, without prejudice. The court further finds that plaintiff intended to file his complaint as a Motion for Permissive Joinder pursuant to Rule

20, FRCP, and other motions in the already pending case of Boatright v. Larned State Hospital, Case No. 05-3183. The clerk shall be directed to make copies of the complaint and attachments and to file the copies as a Motion for Joinder Pursuant to Rule 20, FRCP, in Case No. 05-3183. The clerk shall also be directed to make copies of plaintiff's motions filed herein and file the copies as motions in Case No. 05-3183. The court acknowledges the Entry of Appearance (Doc. 6) filed by attorney for defendants, but finds no need to have this document filed in Case No. 05-3183 at this time. Defendants have not been served with summons in this action, and may respond as appropriate in Case No. 05-3183.

Plaintiff's motion for leave to proceed in forma pauperis in this new action is denied as moot. The dismissal of plaintiff's complaint and denial of his motions herein are without prejudice. Plaintiff's pleadings will be hereafter filed and pending in Case No. 05-3183.

**IT IS THEREFORE ORDERED** that this action is dismissed, without prejudice.

**IT IS FURTHER ORDERED** that plaintiff's motions for joinder and class certification in this action (Doc. 5), for appointment of counsel (Doc. 3), for appointment of class counsel (Doc. 5), and for leave to proceed in forma pauperis (Doc. 2) herein are denied, without prejudice.

**IT IS FURTHER ORDERED** that the clerk of the court make copies of the complaint herein, and file it in Case No. 05-3183, as a Motion for Joinder Pursuant to Rule 20, FRCP; and make copies of plaintiff's motions filed herein and file them as motions in Case

No. 05-3183. The docket entries in Case No. 05-3183 should reference the original date these pleadings were submitted to the clerk for filing.

**IT IS SO ORDERED.**

Dated this 18th day of September, 2007, at Topeka, Kansas.

s/Sam A. Crow  
U. S. Senior District Judge