

United States Court of Appeals  
For the Eighth Circuit

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No. 18-2767

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Alan Lewis Doering

*Plaintiff - Appellant*

v.

Wendy Kelley, Director, ADC; Watson, Warden, Wrightsville Unit; Harris, Assistant Warden, Wrightsville Unit; Daniel Wayne Golden, Disciplinary Hearing Judge, ADC; Dwyatt E. Felts, Sergeant, Wrightsville Unit; Lowe, Major, Wrightsville Unit; John Doe, Assistant Director, ADC; Dale Reed, Deputy Director

*Defendants - Appellees*

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Appeal from United States District Court  
for the Eastern District of Arkansas - Western Division

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Submitted: May 2, 2019

Filed: May 21, 2019

[Unpublished]

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Before ERICKSON, BOWMAN, and GRASZ, Circuit Judges.

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PER CURIAM.

Arkansas inmate Alan Doering appeals after the district court<sup>1</sup> dismissed his 42 U.S.C. § 1983 action asserting a failure-to-protect claim. He argues the district court erred in dismissing his complaint, in denying him leave to amend his complaint, and in not allowing discovery to proceed.

We conclude the district court did not abuse its discretion in denying Doering leave to amend his complaint, as the proposed amendments sought to add defendants and substantially new claims. *See Fuller v. Sec'y of Def. of U.S.*, 30 F.3d 86, 89 (8th Cir. 1994) (concluding the district court did not abuse its discretion when it denied a motion for leave to amend complaint where the amended complaint sought to add defendants and substantially different claims arising from fundamentally different facts). Thus, the merits of his claims in his motion to amend are not before this court. We further conclude, after careful de novo review, that the district court did not err in dismissing the original complaint, as the original complaint did not allege any facts indicating any defendant had failed to provide a reasonable response to a known substantial risk of serious harm. *See Kelly v. City of Omaha*, 813 F.3d 1070, 1075 (8th Cir. 2016) (standard of review); *Young v. Selk*, 508 F.3d 868, 872–873 (8th Cir. 2007) (discussing requirements for an Eighth Amendment failure-to-protect claim). Finally, we conclude the district court did not abuse its discretion in staying discovery while it addressed the motion to dismiss. *See Toben v. Bridgestone Retail Operations, LLC*, 751 F.3d 888, 895 (8th Cir. 2014) (district courts have wide discretion in handling discovery matters). The judgment of the district court is affirmed. *See* 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Billy Roy Wilson, United States District Judge for the Eastern District of Arkansas, adopting the recommended disposition of the Honorable Beth M. Deere, United States Magistrate Judge for the Eastern District of Arkansas.

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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No: 18-2767

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Alan Lewis Doering

Plaintiff - Appellant

v.

Wendy Kelley, Director, ADC; Watson, Warden, Wrightsville Unit; Harris, Assistant Warden, Wrightsville Unit; Daniel Wayne Golden, Disciplinary Hearing Judge, ADC; Dwyatt E. Felts, Sergeant, Wrightsville Unit; Lowe, Major, Wrightsville Unit; John Doe, Assistant Director, ADC; Dale Reed, Deputy Director

Defendants - Appellees

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Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock  
(4:18-cv-00285-BRW)

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**JUDGMENT**

Before ERICKSON, BOWMAN, and GRASZ, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 21, 2019

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

Appendix  
A

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**ALAN DOERING,  
ADC #106115**

**PLAINTIFF**

**VS.**

**4:18-CV-285-BRW-BD**

**WENDEY KELLEY, *et al.***

**DEFENDANTS**

**ORDER**

I have received a Recommended Disposition (“Recommendation”) from Magistrate Judge Beth Deere. After careful consideration of the Recommendation, Mr. Doering’s timely objections, and a *de novo* review of the record, I approve and adopt the Recommendation in all respects.

Defendants’ motion to dismiss (Doc. No. 23) is GRANTED. Mr. Doering’s claims are DISMISSED, without prejudice. The remaining motions (Doc. Nos. 3, 4, 7, 9, 10, 19, 21, 25, 26, 28, 36, 37) are DENIED, as moot.

IT IS SO ORDERED, this 20th day of July, 2018.

/s/ Billy Roy Wilson  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

ALAN DOERING,  
ADC #106115

PLAINTIFF

VS.

4:18-CV-285-BRW-BD

WENDEY KELLEY, *et al.*

DEFENDANTS

JUDGMENT

Consistent with the Order that was entered on this day, it is CONSIDERED,  
ORDERED, and ADJUDGED that this case is hereby DISMISSED, WITHOUT  
PREJUDICE.

IT IS SO ORDERED, this 20th day of July 2018.

/s/ Billy Roy Wilson \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Appendix

8. B

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

ALAN DOERING,  
ADC #106115

PLAINTIFF

v.

CASE NO. 4:18-CV-285-BRW-BD

WENDEY KELLEY, *et al.*

DEFENDANTS

**RECOMMENDED DISPOSITION**

**I. Procedure for Filing Objections**

This Recommended Disposition (“Recommendation”) has been sent to Judge Billy Roy Wilson. Any party may file written objections to this Recommendation. Objections must be specific and must include the factual or legal basis for the objection. To be considered, objections must be received in the office of the Court Clerk within 14 days of this Recommendation.

If no objections are filed, Judge Wilson can adopt this Recommendation without independently reviewing the record. By not objecting, parties may also waive any right to appeal questions of fact.

**II. Discussion**

A. Background

Alan Doering, an Arkansas Department of Correction (“ADC”) inmate, filed this lawsuit without the help of a lawyer under 42 U.S.C. § 1983. (Docket entry #2) He claims that ADC officers failed to protect him from serious threats made by other inmates.

(Docket entry #2) The Court allowed Mr. Doering to proceed *in forma pauperis* ("IFP"), despite his litigation history, based on allegations that he faced imminent physical injury.

Defendants have now moved to revoke Mr. Doering's IFP status and to dismiss all pending claims. (#21, #23) Mr. Doering has not filed a response to the motion, but he has filed a number of motions that remain pending in this case. The Court will consider Mr. Doering's verified complaint and supplemental filings in reviewing the Defendants' motion to dismiss.

#### B. Standard

In deciding whether Mr. Doering has stated a federal claim for relief, the Court must determine whether he has pleaded facts with enough specificity "to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint cannot simply "[leave] open the possibility that a plaintiff might later establish some 'set of undisclosed facts' to support recovery." *Id.* at 561 (citation omitted). Rather, the facts set forth in the complaint must be sufficient to "nudge[] [the] claims across the line from conceivable to plausible." *Id.* at 547.

#### C. Failure-to-Protect Claim

##### 1. Factual Allegations

According to Mr. Doering's complaint, on April 10, 2018, while he was housed in general population at the Wrightsville Unit, several inmates affiliated with the Aryan brotherhood physically threatened him. After he reported the threats to staff members, Captain Young placed him on investigative status. (#2 at p.7) The following day, Mr. Doering appeared before Defendants Harris and Lowe at "restrictive housing review." At

that time, Mr. Doering requested “P.C. single man status.” (#2 at p.7) Defendants Harris and Lowe asked Mr. Doering to identify the inmates who had threatened him, but he refused.

Following the review hearing, Defendant Felts escorted Mr. Doering to his cell and instructed him to pack his belongings so that he could return to general population. Mr. Doering refused Defendant Felts’s order. As a result, Mr. Doering received a major disciplinary and was sentenced to fifteen days in punitive isolation. In a supplement to his amended complaint, Mr. Doering complains that, rather than being placed in protective custody, Defendants “ordered him to indefinite restrictive housing 24 hour a day lock down.” (#12 at p.1)

On or about, May 18, 2018, Mr. Doering was transferred to the East Arkansas Regional Unit (“EARU”) of the ADC.<sup>1</sup> (#29-2 at p.1)

## 2. Analysis

Prison officials have a long-established duty to protect prisoners from violence at the hands of other prisoners. See *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). In order to establish this constitutional violation, Mr. Doering must prove that his incarceration at the Wrightsville Unit posed a substantial risk of serious harm (objective component), and that Defendants actually knew of, or were deliberately indifferent to, the risk Mr. Doering

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<sup>1</sup> Mr. Doering states that he was transferred to the EARU on April 18, 2015. In his complaint, filed on April 24, 2018, however he listed his address as the Wrightsville Unit. (#2 at p.7) Mr. Doering filed a notice of change-of-address on May 23, 2018, indicating that he was at the EARU. (#10) Finally, Mr. Doering’s status assignment sheet indicates that he was housed at the Wrightsville Unit on May 10, 2018. (#21-1 at p.1)

faced, but disregarded that risk (subjective component). *Pageles v. Morrison*, 335 F.3d 736, 740 (8th Cir. 2003); *Jackson v. Everett*, 140 F.3d 1149, 1151 (8th Cir. 1998). An inmate's complaints of "general fear for his safety" are not enough to show that a defendant "acted with deliberate indifference." *Robinson v. Cavanaugh*, 20 F.3d 892, 895 (8th Cir. 1994).

Here, it is undisputed that, immediately after Mr. Doering reported that other inmates had threatened him, Mr. Doering was moved out of general population at the Wrightsville Unit. Even though Defendant Harris did not assign Mr. Doering to protective custody, it is undisputed that Mr. Doering did not return to general population at the Wrightsville Unit before his transfer to the EARU.<sup>2</sup> Finally, it is undisputed that Mr. Doering was not injured by any inmate during his incarceration at the Wrightsville Unit.

Based on these facts, Mr. Doering has failed to allege facts that would show that the Defendants knowingly placed him in harm's way, or that he suffered any harm during his incarceration at the Wrightsville Unit. Even assuming Mr. Doering's allegations to be true, the Court cannot conclude that his continued incarceration at the Wrightsville Unit

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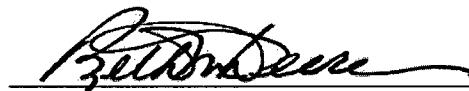
<sup>2</sup> In his subsequent pleadings, Mr. Doering complains about the conditions of his confinement at the EARU. Those claims, however, arose after Mr. Doering filed this lawsuit. Therefore, he could not have fully exhausted his administrative remedies regarding those claims before filing this lawsuit. He cannot pursue those claims in this case. See 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted").

posed a substantial risk of harm to his safety, or that any of the Defendants disregarded the risk that Mr. Doering faced.

**III. Conclusion**

The Court recommends that the Defendants' motion to dismiss (#23) be GRANTED. Mr. Doering's claims should be DISMISSED, without prejudice. All pending motions (#3, #4, #7, #9, #10, #19, #21, #25, #26, #28, #36, #37) should be DENIED, as moot.

DATED, this 9th day of July, 2018.



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UNITED STATES MAGISTRATE JUDGE