

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BERRELL FREEMAN,

Plaintiff,

ORDER

v.

03-C-0021-C

GERALD BERGE and
JON E. LITSCHER,

Defendants.

On September 18, 2003, plaintiff filed a “Motion for Clarification” and a “Motion for Joinder.” In the motion for clarification, plaintiff asks whether his claims that he was subjected to unconstitutional cell temperatures at the Wisconsin Secure Program Facility and that he was deprived of food are restricted to injuries he allegedly incurred before March 28, 2002 (the date the settlement agreement was reached in Jones El’ v. Litscher, 00-C-421-C). This is ground I have covered twice before in orders entered in this case on June 3, 2003 and February 12, 2003. The restriction applies to his cell temperatures claim; it does not apply to his food deprivation claim. To the extent that plaintiff appears to be requesting modification of the earlier decisions restricting his cell temperatures claim, I

decline to rehash those decisions at this late date.

Also, plaintiff's motion for joinder will be denied. In this motion, plaintiff requests permission to add the Wisconsin Secure Program Facility maintenance department and Samuel A. Nelson as defendants. Plaintiff alleges that defendant Berge has admitted to relying on the maintenance department and Samuel Nelson in making "building maintenance decisions" and that Nelson is responsible for "supervision of all construction in the institution."

It is well past the time for plaintiff to amend his complaint to add defendants. The parties are briefing cross motions for summary judgment and both sides have filed all but their reply briefs. If the undisputed facts reveal that the cell temperatures at the facility were so severe as to cause plaintiff physical harm and not mere discomfort, and that one or the other or both defendants knew of these extreme conditions and allowed them to exist, then he will be entitled to monetary relief. Neither Berge nor Litscher has advanced an argument that he lacked personal responsibility for insuring that the heating and cooling system at the prison operated in a manner that would maintain the safety and health of the prison's inmates. Plaintiff does not suggest that he has discovered evidence that the entire "maintenance department" and Samuel Nelson had control over defendant Berge's and Litscher's ability to control allegedly unconstitutional cell temperatures. He contends only that defendant Berge relied on maintenance staff and Nelson in making building

maintenance decisions. This is not enough to make the maintenance staff and Nelson liable to plaintiff.

ORDER

IT IS ORDERED that plaintiff's motions for clarification and for joinder are DENIED.

Entered this 22nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge