

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

GARRY A. BORZYCH,

Plaintiff,

v.

MATTHEW J. FRANK, Secretary of Wisconsin
Department of Corrections (DOC);
STEVE CASPERSON, Administrator of
Wisconsin's Department of Adult Institutions (DAI);
CINDY O'DONNELL, Office of the Secretary (OOS);
SANDRA HAUTAMAKI, Corrections Complaint Examiner;
DANIEL BERTRAND, Warden of Green Bay Corr. Inst.;
PETE ERICKSON, Security Director of G.B.C.I.;
LT. WAYNE NATZKE, Lieutenant at G.B.C.I.;
GLEN RIPLEY, Inmate Complaint Examiner (ICE); and
KATHLEEN BIERKE, Reviewer of Rejected Complaints,

Defendants.

In an order dated January 5, 2004, I screened plaintiff's complaint pursuant to 28 U.S.C. § 1915A and allowed him to proceed on his claims that

(a) defendants Frank, Casperson, O'Donnell, Hautamaki, Bertrand, Erickson, Natzke, Ripley and Bierke violated his rights under the First Amendment, the Religious Land Use and Institutionalized Persons Act, the equal protection clause of the Fourteenth

Amendment and several state laws when they deprived him of his copies of “Temple of Wotan” and “Creed of Iron;”

(b) defendants O’Donnell and Hautamaki authorized defendant Erickson to confiscate two of plaintiff’s books in retaliation for filing a grievance;

(c) defendants Frank, Casperson and Bertrand violated his rights under the establishment clause of the First Amendment by allowing inmates in the segregation unit to keep copies of the Bible or Koran but not Odinist literature; and

(d) defendants Bertrand, Ripley and Bierke conspired to deprive him of his two religious texts.

I dismissed several other claims plaintiff raised in his complaint because they were not legally viable. In addition, I stayed a decision whether to allow plaintiff to proceed on a claim that defendants had deprived him of his right of access to the court, so that plaintiff could amend his complaint to identify the non-frivolous cause or causes of action that he was unable to pursue because of allegedly inadequate access to the prison law library. I advised plaintiff that if he did not provide this necessary information, I would dismiss this claim and his related state law claim that defendants violated Wis. Amin. Code § 309.155.

Now plaintiff has filed a “Notice of Motion and Motion to Amend Complaint,” “Notice of Motion and Motion to Waive Service of Amended Complaint” and a proposed amended complaint. Although plaintiff expresses his belief that the amended complaint

must be allowed as a matter of course because it was filed before defendants filed an answer to the original complaint, see Fed. R. Civ. P. 15, he is mistaken. Because plaintiff is a prisoner, the court must screen any pleading he files pursuant to 28 U.S.C. § 1915A. To his credit, plaintiff has lightened the task of screening his amended complaint by listing in his motion to amend the precise changes he wishes to make to his original complaint. From a review of these requested changes, I conclude that plaintiff's motion to amend must be denied.

At the outset, I note that none of plaintiff's proposed changes include new allegations to support his claim that he was deprived of his right of access to the court. Therefore, I will dismiss this claim and the state law claim that relates to it.

In attempting to amend his complaint, plaintiff's primary purpose appears to be to develop his claim that defendants violated his Fourteenth Amendment due process rights by taking his books. However, no amount of factual information will change plaintiff's claim into one of constitutional proportion. As I told plaintiff in the January 5 order, as long as state remedies are available for the loss of property (and they are), neither intentional nor negligent deprivation of property gives rise to a constitutional violation. Daniels v. Williams, 474 U. S. 327 (1986); Hudson v. Palmer, 468 U.S. 517 (1984).

Plaintiff concedes in his "Notice of Motion and Motion to Waive Service of Amended Complaint" that "the amended complaint does not raise significantly different issues as the

original complaint.” This is definitely the case. The remaining changes that plaintiff lists are no more than additions of legal conclusions, minor and insignificant word changes, and paragraph shifting. Allowing plaintiff to precisely manicure his original pleading by filing an amended complaint would serve only to delay the progress of this lawsuit. It would not further any interest of justice.

ORDER

IT IS ORDERED that

1. Plaintiff’s claims that defendants violated his constitutional right of access to the courts and his rights under Wis. Admin. Code § 309.155 by limiting his access to the prison library are DISMISSED.

2. Plaintiff’s “Notice of Motion and Motion to Waive Service of Amended

Complaint” and “Notice of Motion and Motion to Amend Complaint” are DENIED.

Entered this 4th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge