

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

GARY B. CAMPBELL,

Plaintiff,

v.

CAPTAIN NYKLEWICK and
CAPTAIN PARADISE,

Defendants.

ORDER

05-C-481-C

Plaintiff Gary Campbell, a pretrial detainee at the Milwaukee County jail, has filed a motion “for emergency injunction relief” in this action, contending that Milwaukee County jail officials who are not named as defendants are interfering with his ability to prosecute this case. In addition, plaintiff has submitted a letter dated March 21, 2006, in which he objects to Magistrate Judge Crocker’s statement in an order dated March 16, 2006, that plaintiff appeared to be attempting to perpetrate a fraud upon the court, and in which he asks for appointed counsel. I will address each of these submissions in turn, starting with plaintiff’s motion for emergency relief.

In support of plaintiff’s “Motion for Emergency Injunction Relief,” plaintiff has

submitted “inmate request” forms dated March 16, 17, 18 and 19 addressed to “Open Records,” in which he advises jail officials that he “need[s] to make legal copies of very important legal documents.” On all but one of the requests, someone has written, “We do not make copies.” No notation of any kind appears on one form. According to plaintiff, he is being denied access to the courts because jail officials are not honoring his requests for free photocopies of documents he describes in the inmate requests as “very important legal documents.” He tells the court that without copies of these “very important legal documents,” he cannot file a motion to compel production of documents and for sanctions or a motion for summary judgment. He appears to believe that he is entitled to unlimited free photocopies of materials he wishes to file with the court. He is mistaken.

As a general rule, it is improper for plaintiff to raise in the context of this lawsuit a claim that jail officials who are not parties to this action are interfering with his right of access to the courts. The rule has one exception. The court will entertain a motion to enjoin non-parties from interfering with a litigant’s ability to prosecute in the rare instance in which the plaintiff can show that the interference is directly, physically impairing his ability to prosecute his lawsuit. In this case, plaintiff does not explain why he cannot make hand-copies of his motions and supporting papers.

Even if plaintiff wants to submit documents with his motion for summary judgment that are not suitable for hand-copying, plaintiff has not shown that such documents are

material to a decision in his case and that the decision of jail officials to refrain from photocopying the documents is unjustified. In Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003), the Court of Appeals for the Seventh Circuit held that incarcerated persons are not entitled to unlimited free supplies and photocopies so that they can prosecute as many lawsuits as they wish. The court held that district courts in Wisconsin are under no obligation to order the state of Wisconsin to lend prisoners more money or paper than they are authorized to receive under Wisconsin's legal loan statute, Wis. Adm. Code § DOC 309.51.

The Wisconsin statute is not intended for the funding of prisoners' suits --- as explained in the Luedtke [v. Bertrand], 32 F. Supp. 2d 1074, 1076 (E.D. Wis.1999)] case, the loans authorized by the statute are not "funds which are disbursed or credited to an inmate's account to be used as he wishes" but rather "simultaneous credits and debits . . . for the sole purpose of enabling prisoners to purchase 'paper, photocopy work, or postage' on credit." And Lindell has "no constitutional entitlement to subsidy," Lewis v. Sullivan, 279 F.3d 526, 528 (7th Cir. 2002), to prosecute a civil suit; like any other civil litigant, he must decide which of his legal actions is important enough to fund. Lucien v. DeTella, 141 F.3d 773, 774 (7th Cir. 1998). If he is able to convince Wisconsin to extend him more credit for his legal endeavors, in apparent violation of Wisconsin law, any debt arising from that extension of credit will be a matter strictly between him and Wisconsin, and not any business of the federal courts.

Id.

During the time plaintiff has been detained at the Milwaukee County jail, he has been a prolific litigant in this court. In late 2004, he filed an action, Campbell v. Johnson, 04-C-

661-C, asserting that the defendants in that case had subjected him to excessive force during the course of an arrest. The record of that case details 44 docket entries describing submissions offered by plaintiff. Even now, plaintiff is pursuing an appeal in that case, following the jury's conclusion that defendant was entitled to judgment.

In addition to case no. 04-C-661-C, in June 2005 plaintiff filed a lawsuit on behalf of a group of detainees at the Milwaukee County jail, Campbell v. Milwaukee County Jail, 05-C-363-C. Because there were multiple claims in the suit pertaining to plaintiff only, I severed his action from the others in the group. This case is plaintiff's severed action. He has been allowed to proceed on one simple claim that defendants deprived him of due process when they placed him in segregated confinement without providing him advance written notice of the charges he was facing, an opportunity to present witnesses at his disciplinary hearing and a statement of findings justifying his punishment of 10 days in disciplinary segregation. During the course of this action, plaintiff has filed two motions seeking reconsideration of orders entered in the case and he has propounded interrogatories and requests for production of documents without apparent interference from jail officials. He has filed documents titled "affidavit" and "Notice of Claim and Notice of Injury," neither of which is relevant to the claim on which he is proceeding in this action.

In addition, after he filed his motion for emergency injunctive relief, plaintiff filed a duplicate copy of his motion for an injunction and a "memorandum" asking the court to re-number pages in a brief supporting plaintiff's motion for summary judgment. (The court's

docket does not show that plaintiff has filed a motion for summary judgment.) Additionally, he has written letters to this court, Magistrate Judge Crocker and the clerk of court, two of which are accompanied by carbon copies of letters plaintiff wrote to counsel for the defendants, and he has filed a complaint and a notice of claim on behalf of another inmate, Percy Brown.

In addition, plaintiff is presently litigating a habeas corpus action in the Eastern District of Wisconsin, Campbell v. Clarke, 06-CV-00158-LA. Shortly before March 21, 2006, he filed a new lawsuit in this court, Campbell v. Clarke, 06-C-148-C, alleging that he and all other inmates at the Milwaukee County jail are being denied access to the courts because of inadequacies in the jail's law library and jail officials' refusal to provide inmates with "legal paper, carbon paper [and] stamps" (I note that most of plaintiff's submissions, including his most recent ones, are written on legal paper, that plaintiff was able to mail these documents to this court using first class postage and that in just the past few days, plaintiff has submitted to this court carbon copies of his "motion for emergency injunction relief," a letter he wrote to Judge Crocker on March 21, 2006 and a letter he wrote to counsel for the defendants in this case on March 26, 2006.)

Plaintiff's relentless demand for legal supplies and copying privileges may well have caused jail officials to assess the cost of funding plaintiff's court activities and decide to bring the handouts to a halt. Therefore, unless plaintiff can show that he has been financing his litigation costs personally, he cannot complain about the jail's refusal to give him free access

to photocopies and legal supplies. Because plaintiff has not shown that he is being physically prevented from prosecuting this lawsuit or that any physical impediment he does face is unwarranted under the circumstances, I will deny plaintiff's motion for emergency injunction relief.

Next, plaintiff objects to an order the magistrate judge entered in this case on March 16, 2006, chastising plaintiff for engaging in discovery misbehavior and warning plaintiff that for the remainder of this litigation he "will be held to the highest standard of compliance with all rules and procedures." Plaintiff argues that if he is going to be held to such high standards, he will need appointed counsel. In addition, plaintiff contends that the magistrate judge has a flawed understanding about what happened during discovery.

Although the magistrate judge may have made unfounded assumptions about plaintiff's behavior, he was not incorrect in pointing out in his order that compelling evidence exists in case no. 04-C-661-C that plaintiff engaged in litigation misconduct. Worse, it has now come to this court's attention that plaintiff may be perpetuating a serious fraud upon the court in connection with the present case. In a letter dated March 24, 2006, counsel for defendants suggests that plaintiff's representations of indigence to this court may be fraudulent. Attached to the letter is a copy of a February 13, 2006 report from the jail in which jail officer Baus describes the following event.

At approximately 1508 hours [inmate] Spsychala was removed from his cell in a Ripp belt. Spsychala was escorted to Pod 4D at approximately 1509 hours.

Since the pod was slow to lock in, the decision was made by Sergeant

Fatrena Hale to leave the pod locked in for the remainder of the first half of the night. At approximately 1559 hours I was conducting a round. When I arrived at cell #16 inmate Gary Campbell (M/B 10/07/1978 #422962411) told me he needed help.

Campbell informed me that he owed a lot of money to the courts for filing fees. To avoid paying these fees, Campbell was having family members deposit money into Spsychala's inmate account. Spsychala would then order commissary items for Campbell. Campbell asked me to allow him to use the telephone because someone was going to deposit money on Spsychala's account tonight. Since Spsychala was moved to pod 4D, it would not be possible for Campbell to get the items from him. I informed Campbell that I could not help him with this problem and he shouldn't have done it to begin with. End report.

Although Baus's statement is not submitted under oath, defense counsel has offered to obtain an affidavit from Baus recounting this event upon the court's request. I believe such a request is appropriate. If in fact plaintiff has been hiding money to avoid his obligations under the Prison Litigation Reform Act, he cannot be trusted to make honest representations to the court in his motions or play by the other rules governing this case. A sanction of dismissal of this action may serve to discourage him from engaging in similar behavior in possible future litigation. Therefore, I am requesting that defendants make a formal motion for the imposition of sanctions on plaintiff for perpetuating a fraud upon the court and that they support the motion with an affidavit from Officer Baus detailing the events of February 13, 2006. Once the motion is filed, plaintiff will be allowed to serve and file an affidavit responding to the motion and defendants may serve and file a reply. In the meantime, the April 21 deadline for filing dispositive motions is stricken from the calendar. Furthermore,

the court will not entertain any other motions plaintiff files in this case until the matter of sanctions has been decided.

ORDER

IT IS ORDERED that

- 1) plaintiff's "Motion for Emergency Injunction Relief" is DENIED;
- 2) plaintiff's motion for appointment of counsel is DENIED; and
- 3) defendants may have until April 14, 1006, in which to file a motion for sanctions, together with supporting documents; plaintiff may have until April 24, 2006, in which to serve and file a response; and defendants may have until May 1, 2006, in which to serve and file a reply.

Further, IT IS ORDERED that the deadline for filing dispositive motions is STRICKEN. A new deadline will be established if this case survives the sanction motion.

Entered this 5th day of April, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge