

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

MARK D. MARSHALL,

Plaintiff,

v.

PHIL KINGSTON, Warden of Waupun,
JEFFREY GARBELMAN, Psychologist,
MARY GORSKI, Nurse Practitioner, ICE JAMES
MUENCHOW, ICE THERESA MURPHY,
BELINDA SCHRUBBEE, HSU Manager,
LIEUTENANT HOLM and BRUCE SIEDSCHLAG,
Seg. Unit Manager,

Defendants.

ORDER

07-C-173-C

In this civil action for monetary and injunctive relief, plaintiff Mark D. Marshall, a prisoner at the Waupun Correctional Institution, has been allowed to proceed on the following claims:

1) defendants Bruce Siedschlag and Lt. Holm denied plaintiff access to Christian religious materials while he was confined in the segregation unit at the Waupun Correctional Institution in violation of his rights under the free exercise clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act;

2) defendants violated plaintiff's Eighth Amendment rights in the following ways:

a) Mary Gorski and Belinda Schrubbee denied plaintiff adequate medical care for his high blood pressure and hernia;

b) defendant Jeffrey Garbelman failed to adequately treat plaintiff's mental health care needs;

c) defendant James Muenchow falsified facts in his recommendation to dismiss plaintiff's complaint that plaintiff was not receiving adequate mental health care;

d) defendants Gorski and Schrubbee refused to provide him with meals that provided adequate nutrition;

e) defendant Theresa Murphy falsified facts in her recommendation to dismiss plaintiff's complaint that he was receiving inadequate nutrition;

f) defendants Phil Kingston and Siedschlag exposed plaintiff to unconstitutional conditions of confinement including constant illumination of his cell and dangerously cold conditions in the recreation areas; and

g) defendant Holm used excessive force against petitioner by spraying plaintiff in the face with an "incapacitative agent" on January 7, 2007.

Defendants have answered plaintiff's complaint and, in a preliminary pretrial conference order dated August 7, 2007, Magistrate Judge Stephen Crocker has established a schedule for completing discovery, filing dispositive motions and otherwise moving this case

to resolution.

Now plaintiff has filed a document titled “Motion to Instate or Reinstate Plaintiff’s Injunctive Relief,” which I construe as a motion for a preliminary injunction. In his motion, plaintiff points out that for a time after he filed his case in this court, he was transferred to the Milwaukee Secure Detention Facility. However, recently, he was moved back to the Waupun Correctional Institution, where the claims asserted in this action arose. He says that he has spoken to defendant Jeffrey Garbelman about his mental health care needs and that Garbelman has advised him that he is “unaware of any lawsuit upon him and [plaintiff’s] stay will be like the last stay and [plaintiff] will have to learn to cope and just deal with it.” Plaintiff asks that the court “place plaintiff in a facility where the purpose of operation is mental health care.” Plaintiff’s motion for a preliminary injunction will be denied without prejudice because it is not supported by evidence to prove his entitlement to emergency injunctive relief and because his motion is not in compliance with this court’s Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order.

In his complaint, plaintiff alleged that Garbelman “lied” to him about issues related to his mental health care, in some cases “prolonging out of cell counseling sessions.” In addition, he alleged that Garbelman refused to see him when he asked for care and that, at times, plaintiff engaged in acts of self-harm in order to compel clinical intervention. These allegations were construed generously at the earliest stage of plaintiff’s lawsuit to state a

possible claim that Garbelman was being deliberately indifferent to plaintiff's serious health care needs. However, the standard the court uses to screen a complaint at the outset is significantly less stringent than the standard to be applied in deciding a motion for emergency injunctive relief.

A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). Thus, in order for plaintiff to obtain emergency injunctive relief, he will have to put in evidence to prove that he enjoys a likelihood of success on the merits of his claim that Garbelman is violating his Eighth Amendment rights and that irreparable harm will result if the requested relief is denied. That will be difficult for plaintiff to do. He not only has to supply evidence to prove that he is presently in need of mental health treatment, that defendant Garbelman is aware of the seriousness of the need and that he nevertheless refuses to provide plaintiff any treatment, but he will have to put in expert medical evidence to show that the treatment he is receiving, if he is receiving some form of treatment, is so totally without medical or penological justification that it results in the gratuitous infliction of suffering. Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003) (quoting Gregg v. Georgia, 428 U.S. 153, 173

(1976)). If all plaintiff can prove is that Garbelman is not giving him the particular treatment he wants or is not meeting with him as frequently as plaintiff wants, plaintiff's showing will fall far short of a showing of a likelihood of success on the merits of his claim that Garbelman is violating his Eighth Amendment rights.

Moreover, plaintiff's motion does not comply with this court's procedures for obtaining preliminary injunctive relief. (As noted above, the procedures are included to the parties with a copy of this order.) These procedures require that plaintiff submit individually numbered proposed findings of fact, each of which is followed by a citation to the location of admissible evidence in the record that supports the factual proposition. If plaintiff renews his motion and does not follow these procedures, his motion will be denied on that ground alone.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED without prejudice to his renewing the motion at such time as he can support the motion with evidence sufficient to show his entitlement to such relief and proposed findings of fact as

required by this court's procedures.

Entered this 29th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge