

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

JEFF HOLZEMER,

Plaintiff,

v.

MEMORANDUM and ORDER
07-C-353-S

RICK RAEMISCH and
JOHN BETT,

Defendants.

Plaintiff Jeff Holzemer was allowed to proceed on his First Amendment claim against defendants Rick Raemisch and John Bett. In his complaint he alleges that he was denied five commercially published photographs pursuant to a Department of Corrections policy.

On October 10, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

At all times material to this case plaintiff Jeff Holzemer was incarcerated at the New Lisbon Correctional Institution, New Lisbon, Wisconsin. Defendant Rick Raemisch is the Secretary of the Wisconsin Department of Corrections (DOC). Defendant John Bett is the Administrator of DOC's Division of Adult Institutions (DAI).

As of September 5, 2006 the Division of Adult Institutions (DAI) of the DOC adopted a new inmate personal property policy, DAI Policy #309.20.01. Under this policy individual commercially published photos are not allowed in the institution.

The reason that the DOC adopted this policy was that it could not continue to manage the increased volume of commercial photographs sent to the institution. The photographs had to be reviewed by mailroom staff for nudity and otherwise disallowed content. Where the photos were not permitted because of content, more staff time would be required to process the offending photographs. Personal photographs require less staff time because they are less likely to display disallowed content. Magazines are also easier to process than individual commercial photographs because mailroom staff can more readily predict whether a magazine will contain disallowed content because of its subject matter.

On May 15, 2007 plaintiff received a Notice of Non-Delivery of Mail rejecting "5 Commercial Photos Featuring Nudity". These photographs were sent to him by Moonlite Productions.

On May 29, 2007 plaintiff filed an inmate complaint concerning the denial of the five photographs. On May 31, 2007 the Inmate Complaint Examiner dismissed plaintiff's complaint stating that commercial photographs were not allowed. That same date the Complaint Reviewer affirmed the dismissal of plaintiff's complaint. On June 11, 2007 the Corrections Complaint Examiner affirmed the

dismissal of plaintiff's complaint because commercial photographs are prohibited pursuant to DAI Policy 309.20.01. On June 11, 2007 the Secretary accepted the decision the Corrections Complaint Examiner and dismissed plaintiff's complaint.

MEMORANDUM

Plaintiff claims that his First Amendment rights were violated when he was denied five commercial photographs featuring nudity.

Plaintiff was denied the five commercial photographs pursuant to DAI Policy 309.20.01. A prison regulation does not infringe on an inmate's constitutional rights if it is reasonably related to a legitimate penological goal. Turner v. Safely, 482 U.S. 78 (1987).

In Turner the Court identified the following four factors as helpful in determining whether a prison regulation is reasonably related to a legitimate penological goal: 1) a "valid, rational connection" between the regulation and a legitimate government interest; 2) the existence of alternative methods for the inmate to exercise his constitutional right; 3) the effect the inmate's assertion of that right will have on the operation of the prison and 4) the absence of an alternative method to satisfy the governments's legitimate interest. Turner, 482 at 89-91; Thornburgh v. Abbott, 490 U.S. 401 (1989); Lindell v. Frank, 377 F. 3d 655, 660 (7th Cir. 2004).

This regulation has a valid, rational connection to the legitimate interest of allocating staff time. The increased volume of commercial photographs had to be reviewed by mailroom staff for nudity and otherwise disallowed content. Where the photos were not permitted because of content, more staff time would be required to process the offending photographs. This would cause a significant increase in the expenditure of staff time and other resources which is a legitimate economic concern.

The accommodation of plaintiff's desire to have individual commercial photographs would have a significant adverse impact on allocation of staff resources. Plaintiff has an alternative means of obtaining commercial photographs by receiving magazines that contain photographs of women. In fact he was able to obtain a brochure and catalog representations of the same photographs. There has been no showing that there is an alternative method available to satisfy the legitimate interest of the institution in allocating staff resources in checking the increased volume of commercial photographs for content that is not allowed in the institution.

Pursuant to the four factors provided in Turner the prison regulation that commercial photographs are not allowed is reasonably related to legitimate penological interests. Plaintiff's First Amendment rights were not violated when he was denied the five commercial photographs. Accordingly, as a matter

of law defendants are entitled to judgment on plaintiff's First Amendment claim.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 8th day of November, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge