

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

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NATHAN GILLIS,

Plaintiff,

v.

G. GRAMS, CAPT. ASHWORTH,  
SGT. MORRISON, LT. JOANNE LANE,  
RICK RAEMISCH and JOHN DOES 1-5,

Defendants.  
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OPINION and ORDER

09-cv-245-bbc

In this prisoner civil rights action, plaintiff Nathan Gillis, a prisoner at the Columbia Correctional Institution, is proceeding on various claims against defendants. The parties are currently in the process of briefing defendants' motion for summary judgment. In the meantime, they have filed several documents. First, plaintiff has filed two motions for reconsideration of the portion of the court's October 5, 2010 order, dkt. #176, in which I said that plaintiff was incorrect in arguing that he was allowed to proceed on retaliation claims against defendants Greg Grams, Rick Raemsich and Anthony Ashworth. In the October 5, 2010 order I stated as follows:

Plaintiff seeks clarification regarding retaliation claims on which he

believes he has been allowed to proceed. He states that since he was allowed to proceed on these claims, “[t]here has been no mention of these claims” in subsequent orders. However, plaintiff is incorrect about having been allowed to proceed on retaliation claims. In the February 11, 2010 screening order, I considered plaintiff’s claims that then-defendant M. Marshel retaliated against him by denying him access to attorneys, defendant Ashworth retaliated against him by giving him a false conduct report and that defendants Grams and Raemisch retaliated against him by ignoring his complaints. I concluded that plaintiff failed to state retaliation claims against these defendants because he failed to provide any reason for the alleged retaliation that was “plausible on its face” under Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). However, in that order I allowed plaintiff to proceed on claims that defendants Ashworth, Grams and Raemisch violated his right to due process by issuing him a false conduct report and ignoring his complaints (although only his claim against Ashworth has survived summary judgment).

In his current motion, plaintiff points out that in an April 26, 2010 order, dkt. #47, I granted his previous motion for reconsideration on this issue after he clarified his retaliation claims against Grams, Raemisch and Ashworth:

Plaintiff has filed a motion for reconsideration of the February 11, 2010 order, in which I denied him leave to proceed on his claims that defendant Ashworth retaliated against him by filing a false conduct report and defendants Grams and Raemisch retaliated against him by ignoring his complaints. Plaintiff clarifies his claim by stating that Ashworth filed the conduct report against him because plaintiff reported a correctional officer’s beating of a fellow prisoner to Grams, Raemisch and the Columbia County Sheriff’s Department, which conducted a criminal investigation. Ashworth, Grams and Raemisch knew that plaintiff’s allegations were supported by other witnesses but they retaliated against him anyway. With these clarifications, I am persuaded that plaintiff has alleged enough to support the drawing of an inference that defendants had retaliatory intent. Therefore I will grant plaintiff leave to proceed on his retaliation claim. It appears that defendants have already answered plaintiff’s allegations regarding this claim,

so they need not file an amended answer.

Because it was an error to state in the October 5, 2010 order that plaintiff was not allowed to proceed on these retaliation claims, I will grant plaintiff's first motion for reconsideration. (His second motion will be denied as moot.) His retaliation claims against defendants Grams, Raemisch and Ashworth remain part of this case.

This raises an issue concerning defendants' pending motion for summary judgment. It appears that defendants are not seeking summary judgment on plaintiff's retaliation claims, but it is possible that they did not include those claims in their motion because of the language in the October 5, 2010 order stating that these claims were not part of the lawsuit. Accordingly, I will give the parties a chance to file supplemental materials regarding these claims. Defendants may have until December 15, 2010 to file supplemental proposed findings of fact, supporting evidentiary materials and a brief on the retaliation claims. Plaintiff will have until December 29, 2010 to file his response, and defendants will have until January 8, 2011 to file a reply.

The other submission before the court is defendants' response to the portion of the October 5, 2010 order instructing them to provide the identities of the John Doe defendants who allegedly destroyed plaintiff's religious items on June 5, 2009 by rolling up a wet bath towel with his prayer rugs and Qur'an during a cell search. Defendants state that a review

of the Columbia Correctional Institution's cell search logs show no record of a search on June 5, 2009, and that plaintiff did not file an inmate complaint about a cell search on June 5, 2009. The closest date to June 5 on which a search was performed was May 24, 2009, by Correctional Officer Mark Isaacson. I note that earlier inmate complaint materials submitted by plaintiff show that he filed complaint no. CCI-2009-11966 on May 24, 2009, complaining about his bath towel being wet and rolled up with his blanket and sheets following a cell search (he does not mention anything about his religious items in this inmate complaint). Thus it appears that this is the cell search that plaintiff is complaining about in this case, and that Isaacson is the defendant that should be added to the caption. Because of the discrepancy in the date of the search compared to the date stated by plaintiff in his complaint, I will give plaintiff a chance to respond to defendants' submission, explaining whether he believes the May 24, 2009 search is the one he is complaining about in this lawsuit. He will have until December 15, 2010 to submit his response.

## ORDER

IT IS ORDERED that

1. Plaintiff Nathan Gillis's first motion for reconsideration of the portion of the court's October 5, 2010 order stating that his retaliation claims were not part of this lawsuit, dkt. #179, is GRANTED. Plaintiff's retaliation claims against defendants Greg Grams, Rick

Raemsich and Anthony Ashworth remain part of this lawsuit.

2. Plaintiff's second motion for reconsideration of this issue, dkt. #183, is DENIED as moot.

3. Defendants may have until December 15, 2010 to file supplemental proposed findings of fact, supporting evidentiary materials and a brief in support of their motion for summary judgment on the retaliation claims. Plaintiff will have until December 29, 2010 to file his response, and defendants will have until January 8, 2011 to file a reply.

4. Plaintiff may have until December 15, 2010 to submit a response to defendants' submission identifying a May 24, 2009 search by Correctional Officer Mark Isaacson as the incident in which plaintiff alleges that John Doe defendants destroyed his religious materials.

Entered this 2d day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge