

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

DEREK S. KRAMER,

Plaintiff,

v.

ORDER

10-cv-224-slc

WISCONSIN DEPARTMENT OF CORRECTIONS,
RICK RAEMISCH, WILLIAM POLLARD,
DENNIS MOSHER, PETER HUIBREGTSE,
MICHAEL DONOVAN and TOM GOZINSKE,

Defendants.

Plaintiff has filed a motion for reconsideration of the order in which I denied his motion for leave to amend his complaint to include additional claims for injunctive relief under the Religious Land Use and Institutionalized Persons Act. *See* dkt. 41, 56 and 57. This motion is the seventh time plaintiff has raised this issue in the context of this case. *See* dkts. 5, 9, 10, 16, 19, 41 and 57. Each time, the court has informed plaintiff that he cannot obtain injunctive relief because he is no longer housed at the prison where his requests for religious accommodation were denied (Green Bay Correctional Institution) and he has not yet made the same requests at the prison where he is housed now (Wisconsin Secure Program Facility). Thus, his request for an injunction is moot as to officials at his old prison and unripe as to officials at his current prison. The one exception is plaintiff's claim that WSPF officials have refused to allow him to keep a Thor's Hammer emblem, which plaintiff says is needed to practice his religion of Odinism.

Plaintiff repeats his old argument that the particular prison where he is housed is irrelevant because he is challenging policies of the Department of Corrections. As this court

has explained in previous orders, this argument is not persuasive for several reasons. First, the policies plaintiff cites establish minimum requirements for religious accommodation at individual prisons, but they do not appear to prohibit wardens at each prison from permitting more than what is identified in those policies. Thus, even if the officials at plaintiff's former prison relied on DOC policies in denying plaintiff's religious requests, this does not necessarily mean that officials at WSPF would be required to reach the same conclusion.

In his motion, plaintiff says that Wardens Pollard and Huibregtse have admitted during discovery that they have no authority to create a new "umbrella" religious group for Odinists, but this misses the point. Plaintiff points to no evidence suggesting that a warden must authorize a new umbrella group in order to allow a group of like-minded prisoners to meet, which is what plaintiff is asking to do. Plaintiff has no standing to challenge DOC's religious designations if they do not inhibit his religious exercise.

Second, even if I assumed that DOC policy prohibited wardens from accommodating religious practices more than what is outlined by DOC, this would not make it appropriate to allow plaintiff to add claims for injunctive relief, as the court explained in its July 23, 2010 order:

"[A] plaintiff must show that a favorable decision will likely, not just speculatively, relieve [his] injury." *Sierra Club v. Franklin County Power of Illinois, LLC*, 546 F.3d 918, 927-28 (7th Cir. 2008). For the purpose of his claims for injunctive relief, plaintiff's injuries are that he is unable to engage in group worship and possess certain religious items. However, declaring department policies to be unlawful could not redress those

injuries. That is, even if the department were enjoined from enforcing department policies, plaintiff would still need to obtain permission to engage in group worship or possess religious items from officials at the Boscobel prison, who might have different reasons than the department, reasons specific to that prison, for denying plaintiff's requests. Thus, before plaintiff would be entitled to relief, he would have to file a second lawsuit if Boscobel prison officials did not agree to his demands.

Dkt. 17, at 7.

Third, a district court is not required to entertain a claim for injunctive relief before a prisoner has sought relief from those he wishes to enjoin. As the Supreme Court explained in *Farmer v. Brennan*, 511 U.S. 825, 847 (1994):

“An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity,” *Meredith v. Winter Haven*, 320 U.S. 228, 235 (1943), and any litigant making such an appeal must show that the intervention of equity is required. When a prison inmate seeks injunctive relief, a court need not ignore the inmate's failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them.

In this case, plaintiff is doing exactly what *Farmer* says he is not supposed to do by asking for court intervention against officials he has not even asked for relief.

Obviously plaintiff disagrees with the court's conclusions regarding the proper scope of this case, but it is not going to change, so he should stop wasting his time and instead turn his attention to providing a timely and adequate response to defendants' motion for summary judgment. If plaintiff wishes to obtain injunctive relief from this court, then he must file a new lawsuit, *after* he has sought relief from WSPF officials (and exhausted

available administrative remedies under 42 U.S.C. § 1997e(a)). Any further motions from plaintiff on this subject will be denied without comment.

Plaintiff brings up another issue in his motion: at the same time plaintiff moved for leave to amend his complaint, he asked to voluntarily dismiss several defendants because he “discovered that they were not ‘decision makers.’” *See* dkt. 40. I granted that motion and dismissed those defendants with prejudice. In his motion reconsideration, plaintiff questions the court’s use of the term “prejudice” because he believes it reflects the court’s judgment that he sued those defendants “out of spite, ill will or to cause undue harm.”

The term “with prejudice” is not a criticism of the plaintiff or a judgment on his motives. “Prejudice” has a specific meaning in litigation that has nothing to do with emotions or motivation. “[a] dismissal with prejudice means . . . a dismissal that precludes the plaintiff from bringing a new suit on his claim” against the dismissed defendant. *Disher v. Information Resources, Inc.*, 873 F.2d 136, 139 (7th Cir. 1989). This is distinguished from a dismissal “without prejudice,” which means that the plaintiff is “free to refile the case in another, appropriate forum, and such a refiling would not be subject to a defense based on former adjudication.” *Manez v. Bridgestone Firestone North American Tire, LLC*, 533 F.3d 578, 583 (7th Cir. 2008). In other words, a dismissal “with prejudice” is treated as a resolution on the merits; a dismissal “without prejudice” means that the plaintiff can file the claim at a later time (for example, after the plaintiff has exhausted his administrative remedies) or in a different court. Plaintiff should not interpret either term to mean anything more than that.

ORDER

It is ORDERED that plaintiff Derek Kramer's motion for reconsideration, dkt. #57, is DENIED.

Entered this 27th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge