

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

RONALD STEWART,

Plaintiff,

v.

JOHN EASTERDAY, Administrator,
State of Wisconsin;
STEVE WATTERS, Former Director,
Sand Ridge Secure Treatment Center;
and DEB McCULLOCH, Director,
Sand Ridge Secure Treatment Center;

Defendants.

ORDER

10-cv-409-bbc

Plaintiff Ronald Stewart has filed two motions: (1) a motion to alter or amend the judgment, dkt. #89; and (2) a motion for a declaratory judgment. Dkt. #90. Both motions relate to the opinion and order dated September 19, 2011, in which I granted the summary judgment motion of defendants John Easterday, Steve Watters and Deb McCulloch on plaintiff's claim that defendants were violating his rights under the First Amendment by refusing to allow him to possess video games or video game systems at the facility where he is committed involuntarily.

In his motion to alter or amend the judgment, plaintiff argues that I erred in following the lead of many other courts that have concluded that the relevant standard for First Amendment claims brought by civilly committed detainees is whether the restriction is reasonably related to a legitimate interest. Instead, he says that I should have followed Youngberg v. Romeo, 457 U.S. 307 (1982). Under that case, the question is whether defendants exercised professional judgment. Id. at 321.

Youngberg involved a detainee's rights under the due process clause, not the First Amendment. But even if I were to apply Youngberg to this case, the result would be no different. Plaintiff has not adduced any evidence that defendants failed to use professional judgment in deciding that video games could undermine detainees' rehabilitation.

In plaintiff's "motion for declaratory judgment," he asks for a declaration that "[p]atients and prisoners have a First Amendment right to possess video games to the extent they are not categorically unprotected in the institutional setting." Plaintiff seems to be relying on a portion of the summary judgment opinion in which I rejected the view that video games do not implicate the First Amendment:

Defendants do not argue directly that video games are outside the purview of the First Amendment, but they say that patients and prisoners do not have a right to possess them. To the extent defendants mean to argue that video games are categorically unprotected in the institutional setting, I disagree. Although certain kinds of speech such as obscenity and threats are not protected by the First Amendment, those exceptions apply to everyone, not just certain groups. If speech is protected generally, the standard of review

may change depending on the context of the speech, including the type of speaker or the setting. However, even when the context of the speech requires greater deference to the government, the court still must determine whether restrictions on that speech are adequately justified. The burden on the government may be lighter with respect to some groups, but this does not mean that the court is relieved of its duty to apply the appropriate standard to the restriction at issue, whether the speech at issue is in a publication or another medium.

Dkt. #87, at 5-6 (citations omitted).

Plaintiff has not summarized this discussion correctly, but even if he had, he would not be entitled to the relief he seeks. Court do not have authority to grant declaratory relief on issues of law that do not affect the rights of the parties. In this case, I concluded that defendants did not violate plaintiff's rights under the First Amendment. That is the end of the matter. It makes no difference in the context of this case whether plaintiff retains an abstract right to possess video games under some circumstances.

ORDER

IT IS ORDERED that plaintiff Ronald Stewart's motion to alter or amend the

judgment, dkt. #89, and motion for declaration, dkt. #90, are DENIED.

Entered this 3d day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge