

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

TIMOTHY FRANCIS RIPP,

Plaintiff,

v.

ORDER

10-cv-492-bbc

JANET NICKEL, MARC CLEMENTS,
GREGORY GRAMS, AL MORRIS,
ANTHONY ASHWORTH and WILLIAM POLLARD,

Defendants.

Defendants have filed a motion for reconsideration of the order dated March 14, 2012, dkt. #48, in which I concluded that defendant William Pollard was violating plaintiff's right of access to the courts by refusing to provide postage to plaintiff so that he could mail his response to defendants' motion for summary judgment. I directed Pollard "to provide plaintiff the postage he needs to mail his summary judgment materials to the court" and "[f]or the remainder of the case, [to] provide plaintiff the legal supplies reasonably necessary to litigate the case, including writing utensils, paper, photocopies, envelopes and postage."

In their motion, defendants do not challenge any of the legal conclusions in the

March 14 order. In particular, they do not deny that they have a duty under the Constitution to provide indigent prisoners the basic scribe materials necessary to litigate a civil rights lawsuit. Bounds v. Smith, 430 U.S. 817, 824-25 (1977) (“[I]ndigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them.”). They also do not deny that plaintiff does not have the postage or funds he needs to mail his summary judgment materials to the court and that, if they are not required to provide assistance, he will be unable to oppose their motion for summary judgment.

Instead, defendants argue that the court should ignore plaintiff’s predicament because he has squandered his resources. In particular, they say that plaintiff should not be considered indigent because he receives \$8.00 each month from the Department of Corrections and, after the parties finished briefing plaintiff’s motion to compel, he received a one-time gift from his mother for \$22.81 (after deductions) that he used to buy food and hygiene items. Dkt. #50-2.

Defendants have not shown that the March 14 order should be vacated. The funds plaintiff received from the department were part of the record when plaintiff filed his motion to compel and defendants did not dispute plaintiff’s representation that “one hundred percent of that income is immediately deducted for my federal court filing fees, my release fund account and medical co-pay loans.” Ripp. Decl. ¶ 12, dkt. #44. Accordingly,

defendants have waived that issue. LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir. 1995) (motion for reconsideration may not be used “to advance arguments or theories that could and should have been made before the district court” issued challenged decision).

With respect to the gift plaintiff received from his family in January 2012, defendants do not dispute plaintiff’s representation that it was unanticipated and neither side suggests that plaintiff is likely to receive a similar gift in the near future. Defendants suggest that the law requires plaintiff to use every cent he received for his litigation expenses, but the cases they cite involved prisoners who bought personal items even though a court had ordered them to pay a filing fee or prisoners who had notice that they were required to use particular funds for litigation. E.g., Cosby v. Meadors, 351 F.3d 1324, 1332 (10th Cir. 2003) (prisoner refused to pay filing fee as ordered by court); Lucien v. DeTella, 141 F.3d 773, 774 (7th Cir. 1998) (after court imposed initial partial payment, prisoner spent his money on other things). Campbell v. Nyklewick, 2006 WL 6087657, *1 (W.D. Wis. 2006), is even less instructive because that case involved a prisoner who committed a fraud on the court by lying about his income.

In this case, defendants have not suggested that plaintiff has not lied about his income or violated a court order or that he had notice that he was required to use all gift funds for litigation expenses. He received the gift while his case was stayed for consideration

of *defendants'* obligations to assist him, so it is understandable that he did not immediately notify defendants or the court of the gift. Although I agree with defendants' general point that prisoners may not be entitled to assistance if they "manufacture" their indigency by careless spending, I am not persuaded that plaintiff should lose his right of access to the courts simply because he chose to purchase food and hygiene items for himself on one occasion. Cf. Gluth v. Kangas, 951 F.2d 1504, 1508-09 (9th Cir. 1991) (declaring unconstitutional prison policy that required indigent prisoners to choose between legal supplies and hygiene items).

Alternatively, defendants challenge the scope of the injunction. In particular, they say that it extends further than necessary, in violation of 18 U.S.C. § 3626(a)(1), because it requires defendant Pollard to provide scribe materials to plaintiff "for the remainder of the case." Defendants point out that plaintiff's financial situation could change so that he is no longer indigent and entitled to assistance. Defendants are obviously correct, but it is always the case that future events could moot the need for injunctive relief. The possibility of a change in circumstances does not mean that each stamp or piece of paper that plaintiff needs related to this case must be litigated separately. If defendants believe at any point that plaintiff is no longer indigent, they are free to request relief from the injunction at that time.

Finally, I address plaintiff's motion for an extension of time to submit his summary judgment materials. He filed that motion after the March 14 order, but before he received

defendants' motion for reconsideration. In his motion, he says he needs more time in the law library.

Plaintiff's motion is moot because I stayed the deadlines after defendants filed their motion for reconsideration. However, if plaintiff has not yet received additional time in the law library and he plans to file another request for an extension of time to conduct additional legal research, that request will be denied. Plaintiff represented to the court in a letter dated August 7, 2011, dkt. #32, and again in a declaration filed on November 21, 2011, dkt. #44, that he had completed his summary judgment response and that it was ready for mailing. Thus, it is not clear why plaintiff believes he needs to do more legal research now. In any event, plaintiff has had several months to tweak his summary judgment materials if he believed they were insufficient in some way, so the court will not grant any further extensions. It is long past time to resolve defendants' motion for summary judgment.

ORDER

IT IS ORDERED that

1. The motion for reconsideration filed by defendants Janet Nickel, Marc Clements, Gregory Grams, Al Morris, Anthony Ashworth and William Pollard, dkt. #49, is DENIED.
2. Plaintiff Timothy Francis Ripp's motion for an extension of time, dkt. #52, is

DENIED as moot.

3. Defendant Pollard may have until May 4, 2012, to provide plaintiff the postage he needs to mail his summary judgment materials to the court. Plaintiff may have until May 11, 2012 to file his summary judgment materials with the court. Defendants may have until May 21, 2012, to file their reply materials. No further extensions will be granted.

4. David Harth, Andrew Baird Coursin and Truscenialyn Brooks have fulfilled their obligation as counsel to represent plaintiff for the limited purpose discussed in the September 9, 2011 order. Plaintiff is now proceeding pro se.

Entered this 26th day of April, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge