

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

JAMES R. SCHULTZ,

Plaintiff,

v.

ERIC JOHNSON, JOHN SEVERSON,
KENNETH MILBECK and BRADLEY HOOVER,

Defendants.

ORDER

10-cv-581-bbc

Pro se plaintiff James Schultz is proceeding on two claims in this prisoner civil rights case: (1) defendants Eric Johnson and John Severson used excessive force against him, in violation of the Eighth Amendment; and (2) defendants Kenneth Milbeck and Bradley Hoover punished him because of his involvement with Piety Global International, Inc. and because he possessed information critical of prison officials, in violation of the First Amendment. Now, plaintiff has filed a document titled “Motion for a Cease and Desist Order And/Or For Dismissal.” Dkt. #68.

In his affidavit in support of his motion, plaintiff says that his mail is being monitored by someone named “Captain Lundmark,” who “is the same person who was involved in the

underlying conduct report of the action before this court.” Dkt. #69, ¶ 6. Plaintiff does not explain further, even though Lundmark is not a defendant in this case or even mentioned in plaintiff’s amended complaint. Plaintiff believes that Lundmark is “attempting to interfere in this Court action on behalf of his staff.” Id. at ¶ 8.

Plaintiff does not request specific relief in his motion, but presumably he is asking for an injunction to stop his mail from being monitored. In the alternative, plaintiff says he “believes it will be necessary for him to withdraw this action before the Court for his own protection.” Dkt. #68, at 1.

Defendants do not deny that plaintiff’s mail is being monitored. However, they say in their response that “[a]ny mail monitoring is not being done for any purpose related to this case.” Dkt. #72, at 1. In addition, they have submitted two *in camera* affidavits in support of their position. Dkt. #74.

Having reviewed defendants’ evidence, I am persuaded that any monitoring of plaintiff’s mail is not related to this case. Plaintiff says he is concerned about retaliation or interference with this case, but he does not identify any adverse consequences he has suffered as a result of mail monitoring. If plaintiff believes that prison officials are violating his constitutional rights by monitoring his mail, he is free to file a lawsuit challenging that action, but he has not shown that he is entitled to injunctive relief in this case.

Plaintiff says he wants to withdraw the action if he cannot obtain an injunction. That

is his choice. However, plaintiff should know that if he chooses to dismiss his case now, the dismissal will be with prejudice, which means he will not be able to file the lawsuit again. This case was filed almost a year ago. It would not be fair to defendants to require them to defend against a new lawsuit at some point in the future after this case has proceeded as far as it has. Because plaintiff may not have foreseen this condition of dismissal when he filed his motion, I will give him another opportunity to make his intentions clear.

ORDER

IT IS ORDERED that

1. Plaintiff James Schultz's "Motion for a Cease and Desist Order" is DENIED.
2. Plaintiff may have until August 24, 2011, to inform the court whether he wishes to continue with this case or voluntarily dismiss it with prejudice. If plaintiff does not respond by that date, I will assume that plaintiff wishes to continue.
3. All pending deadlines remain in place.

Entered this 11th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge