IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHAN GILLIS,

OPINION and ORDER

Plaintiff,

11-cv-560-bbc

v.

MICHAEL MEISNER, ANTHONY ASHWORTH, GARY HAMBLIN and CAPT. MORGAN,

Defendants.

- -

In this civil action, plaintiff Nathan Gillis alleges that Columbia Correctional Institution staff violated his rights by prohibiting him from transferring money from his prison account to his mother and niece. More precisely, he is proceeding on the following claims: (1) defendant Anthony Ashworth violated his rights under the First Amendment by denying his disbursement requests in retaliation for filing a lawsuit against Ashworth; (2) defendants Michael Meisner, Gary Hamblin and Captain Morgan violated his due process rights by denying his disbursement requests; and (3) defendants Ashworth, Meisner, Hamblin and Morgan breached plaintiff's settlement agreement with the state by denying his disbursement requests. Defendants have filed a motion for judgment on the pleadings

on plaintiff's due process and breach of contract claims, along with a motion to stay discovery on these claims. Plaintiff has filed a motion for partial summary judgment on his due process claims, motions to strike various submissions by defendants and a motion for a discovery conference.

After considering the parties' submissions, I will deny plaintiff's motions to strike defendants' submissions and grant defendants' motion for judgment on the pleadings regarding plaintiff's breach of contract and due process claims. Also, I will deny plaintiff's motion for summary judgment, defendants' motion to stay discovery and plaintiff's motion for a discovery conference. With the breach of contract and due process claims dismissed, the case will proceed on plaintiff's retaliation claim against Ashworth.

MOTIONS TO STRIKE

In support of defendants' motion for judgment on the pleadings, defendants have submitted the settlement agreement that plaintiff contends was breached. Plaintiff has filed a motion to strike this exhibit, arguing that defendants are not allowed to include outside documents in support of that motion and that counsel's affidavit authenticating the exhibits is not signed by counsel. Plaintiff is incorrect on both points.

First, although it is not customary to consider extrinsic evidence when deciding a motion for judgment on the pleadings, courts have some leeway to consider documents

attached to such a motion without converting the motion into one for summary judgment under Fed. R. Civ. P. 12(d). Documents not attached to the complaint may be considered if they are referred to in the complaint, are concededly authentic and are central to the plaintiff's claim. Tierney v. Vahle, 304 F.3d 734, 738 (7th Cir. 2002). The point of the exception is to limit a plaintiff's ability to evade dismissal by failing to attach an important document that proves his claims lack merit. Id. Both the exception and its purpose are applicable here. Plaintiff's breach of contract claim depends on the language of a settlement agreement he reached with the state in conjunction with a previous civil case. Plaintiff failed to attach this agreement to his complaint; defendants have submitted a copy and plaintiff does not dispute its authenticity.

Second, plaintiff takes issue with the signature on counsel's affidavit. This document was signed electronically with an "s/" followed by the author's name. That is sufficient under the court's Administrative Procedures for Electronic Filing and Service, which I have attached to this order. It may be that defendants did not include electronic signatures on the copies they sent to plaintiff. If that is the case, defendants are requested to provide signed copies to plaintiff. However, that oversight would not require the court to strike defendants' affidavit so long as the copy submitted to the court is signed.

Plaintiff's second motion to strike concerns the affidavit of Brett Sutton, a financial officer at the Columbia Correctional Institution. Plaintiff argues that this document was not

properly signed. However, Sutton has electronically signed this document and, as discussed above, an electronic signature is valid. Accordingly, I will deny both of plaintiff's motions to strike.

MOTION FOR JUDGMENT ON THE PLEADINGS

A. Breach of Contract

Defendants' motion for judgment on the pleadings is limited to plaintiff's breach of contract and due process claims. Federal Rule of Civil Procedure Rule 12(c) permits a party to "move for judgment on the pleadings" once the pleadings are closed. The standard for judgment on the pleadings is the same as the dismissal standard under Rule 12(b)(6). Pisciotta v. Old National Bancorp, 499 F.3d 629, 633 (7th Cir. 2007). The court must view the facts in the complaint in the light most favorable to the nonmoving party and grant the motion only if the plaintiff's allegations fail to state a plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). However, I "need not ignore facts set forth in the complaint that undermine the plaintiff's claim or give weight to unsupported conclusions of law." Pisciotta, 499 F.3d at 633.

In his complaint, plaintiff alleges that his settlement agreement with the state in a previous case provided that he would be allowed "to support his family," but that defendants have blocked him from transferring money to his family. However, the copy of this

settlement agreement, signed in January 2007 (arising from Eastern District of Wisconsin case no. 02-cv-463), contains nothing stating that plaintiff would be allowed "to support his family." Instead of explaining how his breach of contract claim can survive if nothing in the agreement supports his position, plaintiff argues that the motion should be converted into one for summary judgment. As discussed above, I may consider the settlement agreement without converting the motion. Because it is clear that the settlement agreement contains no provision allowing plaintiff "to support his family," plaintiff cannot state a breach of contract claim. Accordingly, I will grant defendants' motion for judgment on the pleadings regarding this claim.

B. Due Process

I explained the contours of plaintiff's due process claims in the November 16, 2011 screening order:

> I conclude that plaintiff fails to state claims upon [which] relief may be granted with respect to the following "random and unauthorized" actions: (1) defendant Ashworth's denial of plaintiff's requests even though unit manager supervisors are not authorized to do so; and (2) defendant Meisner's creation of a special unwritten disbursement procedure for plaintiff even though Wis. Admin Code. § 309.48 requires a written procedure.
>
> As for plaintiff's remaining claims, I understand that he is alleging a claim against defendant Meisner for denying plaintiff's requests *before* creating the special unwritten procedure, as well as claims against defendants Hamblin and Morgan for denying his requests. It is unclear whether these denials were

> issued pursuant to state policy or whether they were random and unauthorized actions, but construing his complaint generously, I conclude that he has state[d] due process claims against these defendants.

Dkt. #7. In the screening order, I stated that "I understand plaintiff to be alleging that defendants would not allow him to send more than $25 at a time to his mother." Id.

A procedural due process violation occurs under the Fourteenth Amendment when a state actor deprives an individual of a constitutionally protected interest in "life, liberty, or property" without providing adequate process. Therefore, a due process analysis involves a two-step inquiry: (1) whether the defendants deprived the plaintiff of a constitutionally protected liberty or property interest; and (2) if so, whether that deprivation occurred without due process of law. Doe v. Heck, 327 F.3d 492, 526 (7th Cir. 2003) (citing Zinermon v. Burch, 494 U.S. 113, 125 (1990); Doyle v. Camelot Care Centers, Inc., 305 F.3d 603, 616 (7th Cir. 2002)).

A threshold question is whether plaintiff has identified a constitutionally protected property interest in sending more than $25 at a time to his mother. Defendants point out that it is not settled law whether prison regulations themselves create property interests or whether the standard found in Sandin v. Conner, 515 U.S. 472, 484 (1995), pertaining to liberty interests (states create liberty interests only when state law "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life") applies also to property interests. Tenny v. Blagojevich, 659 F.3d 578, 581 n.3 (7th Cir.

2011) ("The Attorney General makes a strong case that the reasoning of Sandin (although perhaps not in all of the particulars) should extend to statutorily created property interests as well. Because we decide this case on other grounds, we need not take a position on this issue, which has split the circuits.")

Defendants argue that even if the stricter Sandin test does not apply to property interests in the use of funds, plaintiff's claim fails the test for determining such an interest set forth in Campbell v. Miller, 787 F.2d 217, 222 (7th Cir. 1986). In order for a protected interest to be created, the regulation must support a claim of entitlement to the benefit in question; the court must look to "the manner in which it was conferred. Unless the regulation limits an official's discretion in denying the benefit to 'objective and defined' criteria, no protected interest has been created." Campbell, 787 F.2d at 222–23 (footnote and citations omitted)). In short, a protected property interest exists only when the state's discretion is "clearly limited such that the plaintiff cannot be denied the interest unless specific conditions are met." Brown v. City of Michigan City, Ind., 462 F.3d 720, 729 (7th Cir. 2006) (internal quotation marks omitted).

In their briefs and accompanying submissions, both parties refer to various state statutes, administrative regulations and prison policies setting out the regulatory scheme regarding disbursement requests by prisoners. Defendants argue that this structure does not limit prison officials' discretion in allowing disbursements and thus does not create a

property interest. I may take judicial notice of these statutes, administrative regulations and prison policies and may consider them without converting defendants' motion for judgment on the pleadings into a motion for summary judgment. United States v. Wood, 925 F.2d 1580, 1582 (7th Cir. 1991) (district court may take judicial notice of matters of public record); Polnitz v. Peoria County, 2009 WL 311157, *2 (C.D. Ill. Feb. 4, 2009) (taking judicial notice of jail policy manual); see also Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 456 (7th Cir. 1998) ("A court may consider judicially noticed documents without converting a motion to dismiss into a motion for summary judgment.").

After considering the standards applying to prisoner disbursement requests, I conclude that they do not create a protected property interest in sending more than $25 a month to his mother. None of these statutes, regulations or prison policies limit prison personnel's discretion in denying a prisoner's disbursement requests to "objective and defined criteria," Campbell, 787 F.2d at 222–23. A summary of these provisions follows.

Wis. Stat. § 301.32, titled "Property of prisoners, residents and probationers," states in part that a prisoner's property "may be used only under the direction and with the approval of the superintendent or warden." Wis. Stat. § 302.12, titled "Reward of merit" discusses prisoner wages and states in part that "[m]oney accruing under this section remains under the control of the department, to be used for [various surcharges] and the benefit of the inmate or the inmate's family or dependents, under rules promulgated by the department

as to time, manner and amount of disbursements."

Wis. Admin. Code § DOC 309.45 states in part that the department "shall manage inmate funds and permit and forbid spending to achieve" various objectives, including "to develop a sense of responsibility on the part of inmates for payment of family financial obligations and debts." Wis. Admin. Code § DOC 309.48 requires prisons to establish a written procedure for disbursement requests that must include information such as "[h]ow and to whom requests must be made," "[w]hat information requests shall include" and "[w]ho approves or disapproves requests." Wis. Admin. Code § DOC 309.49 is titled "Disbursement of inmate account funds." This regulation states that account funds "in excess of the amount specified for canteen . . . shall be disbursed by the institution business manager," keeping in mind that "[a]ll disbursements shall be consistent with the purposes under s. DOC 309.45." Prisoners "may request to have general account funds disbursed for any reason . . . [and] [t]he procedure for processing inmate requests is required to be written" as stated in § DOC 309.48. In particular, "[r]equests for disbursement in excess of $25 to more than one close family member . . . may be made only with written permission of the superintendent or designee. All other disbursements are approved or disapproved by the person designated by the institution under s. DOC 309.48 (4)." The regulation provides that disbursements of $25 or less "to the inmate's one close family member once every 30 days" fulfill the objectives of § DOC 309.45.

Finally, the Columbia Correctional Institution's "Business Office Policy and Procedure" sets out the disbursement policies of the prison. Under this policy, the unit sergeant "investigates and approves or denies requests" for "[t]ransactions up to $25, to one close family member, as verified by the visiting list, allowed once every 30 days." A social worker "investigates requests to send from $26 to $100 . . . to a close family member, as verified by the visiting list, once every 30 days." For requests of more than $100 to "close family members," the unit manager "investigates and recommends an approval or denial." These requests also need approval from "the social worker and the inmate's parole agent," and are then sent to the warden for final approval or denial.

As stated above, none of the provisions mentioned limits a prison official's discretion in denying the benefit to 'objective and defined' criteria," Campbell, 787 F.2d at 222–23, and I cannot locate any state law further limiting prison officials' discretion. Plaintiff does not address this issue in his brief opposing defendants' motion (his two-page brief is limited to arguing that he has already stated claims upon which relief can be granted pursuant to the court's screening order and that defendants improperly submitted material outside the pleadings), but in his brief in support of his motion for summary judgment, plaintiff argues that defendants have created policies "that [are] not complete . . . . Simply put there [are] no criteria for words like recommendation and what they mean. Thus making it impossible to understand why, how the evaluation process works."

Although I can understand plaintiff's frustration at the lack of concrete criteria on which to base decisions on disbursement requests, this lack of clarity supports the conclusion that the state has not created a property interest; prison officials are afforded significant discretion in deciding whether to approve disbursement requests over $25. (In contrast, it seems that officials are afforded much less discretion in denying requests to send less than $25 to a close family member under Wis. Admin. Code § DOC 309.49(4), but this type of disbursement is not the subject of this case.) It cannot be said that defendants' discretion in denying plaintiff's disbursement requests is "clearly limited such that the plaintiff cannot be denied the interest unless specific conditions are met." Brown, 462 F.3d at 729; cf. Thompson v. Veach, 501 F.3d 832, 836 (7th Cir. 2007) (parole statute did not create protected liberty interest because it did not contain "mandatory language creating an expectancy of release"). Accordingly, I will grant defendants' motion for judgment on the pleadings regarding plaintiff's due process claims.

Because I am granting this motion, defendants' motion to stay discovery on plaintiff's breach of contract and due process claims will be denied as moot. In addition, because plaintiff's complaint does not support his due process claims, I will deny plaintiff's motion for summary judgment on these claims. However, the case will not be dismissed entirely because plaintiff's retaliation claim against defendant Ashworth survives this round of motions.

MOTION FOR DISCOVERY CONFERENCE

Plaintiff has filed a motion for a conference regarding discovery issues. Specifically, plaintiff states that defendants have failed to provide him with copies of email messages either sent or received by defendants regarding the denial of his disbursement requests. Plaintiff states that a conference "could settle this matter without the need for plaintiff to file a motion to compel." I will deny this motion. This court does not schedule a discovery conference every time parties have discovery disputes. Plaintiff should file a formal motion to compel. If the dispute cannot be resolved on the briefs, and the court will schedule a conference.

ORDER

IT IS ORDERED that

1. Plaintiff Nathan Gillis's motions to strike defendants' submissions in support of the parties' dispositive motions, dkt. ##37 & 39, are DENIED.

2. Defendants' motion for judgment on the pleadings regarding plaintiff's breach of contract and due process claims, dkt. #24, is GRANTED.

3. Defendants Michael Meisner, Gary Hamblin and Captain Morgan are DISMISSED from the case.

4. Plaintiff's motion for summary judgment on his due process claims, dkt. #13, is

DENIED.

5. Defendants' motion to stay discovery on plaintiff's breach of contract and due process claims, dkt. #32, is DENIED as moot.

6. Plaintiff's motion for a discovery conference, dkt. #42, is DENIED.

Entered this 30th day of April, 2012.

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