

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

TOMMIE CARTER,

Plaintiff,

v.

THOMAS BELZ, *et al.*,

Defendants.

ORDER

12-cv-301-slc

Plaintiff Tommie Carter is proceeding on claims that defendant prison staff deprived him of his Eighth Amendment right to be free from cruel and unusual punishment by using excessive force against him, failing to intervene to prevent the use of such force, denying medical care and providing inadequate conditions of confinement. This order addresses five motions (listed by the court's docket number):

41: Plaintiff's motion to compel the production of various documents requested in his Second Request for Production of Documents

45: Defendants' motion for a protective order barring plaintiff from filing further discovery requests

48 & 56: Motions by plaintiff for the appointment of counsel

49: Plaintiff's motion for the return of legal documents, dkt. 49.

Dkt. 41: Plaintiff's Motion to Compel Discovery

Plaintiff asks this court to order defendants to produce these documents: 1) plaintiff's entire prison record; 2) plaintiff's entire DOC medical record; 3) documents pertaining to "WSPF/DPC medical center staff training and education;" and 4) "multi-log documents" from the Alpha unit showing who was on duty from October 11, 2011 to October 12, 2011.

As an initial matter, I agree with defendants that plaintiff's letter to defendants, stating simply that he was "dissatisfied" with their responses to his discovery requests, does not amount to

the “good faith effort” to resolve these discovery disputes that is contemplated by the Federal Rules of Civil Procedure. *See* dkt. 44-2, Plt.’s Letter to Defendants, Jan. 31, 2013. Although defendants said they would reconsider their discovery responses if plaintiff identified specific challenges or explained why he thought a response was deficient, plaintiff did not do so. Instead, he filed this motion to compel.

In the interests of efficiency, I will consider the motion because defendants have responded to it. Plaintiff is warned, however, that before he may file any more motions to compel discovery in this lawsuit, he must make a good faith effort—that is, a genuine effort—to attempt to solve the problem with the defendant. It will not be enough to advise the defendants’ attorney that the responses are “unsatisfactory” or that plaintiff is “dissatisfied” with them. Plaintiff must explain what more he wants and why it’s relevant discovery in this lawsuit.

I am not going to require defendants to produce a complete set of plaintiff’s medical and prison records. As defendants informed plaintiff in their responses, he may inspect and make copies of his medical, psychological and prison records by submitting a request to the Health Services Unit, Psychological Services Unit or the Institution Complaint Examiner. Although plaintiff asserts that the HSU manager has not approved photocopying of any documents, plaintiff does not say why. It is possible that his requests have been denied because he has not paid for the costs of the photocopies. As defendants correctly point out, it is plaintiff’s responsibility to pay for the copies. The court made it a point to advise plaintiff of this requirement in the October 22, 2012 preliminary pretrial conference order, dkt. 25 at 2-3. If plaintiff has money for the copies but his requests are still being denied, then he should notify defendants’ lawyer, so the lawyer can contact the appropriate officials to resolve the problem.

I am denying plaintiff's remaining requests to compel discovery. Defendants have responded to plaintiff's request about medical training by stating that all non-officer employees hired to work in the medical unit must attend a 40-hour Bureau of Health Services orientation. Defendants decline to produce the training materials on the ground that they are confidential and that their production poses a security threat. This is a legitimate reason for denying plaintiff's request. As defendants explain in their response to plaintiff's motion, providing inmates with the details of DOC's training for its health services staff is a potential security risk because access to this information could allow inmates who wished to do so to circumvent established DOC and HSU procedures and to attempt to manipulate staff. Just as importantly here, plaintiff has failed to offer a detailed explanation as why he needs this information for his lawsuit.

For the same reasons, defendants do not need to produce the multi-log documents requested by plaintiff. Defendants have provided plaintiff with the names of the officers on duty on the Alpha unit throughout October 11 and October 12, 2011. As they explain, however, producing the multi-log documents poses a security risk because the logs provide more specific details about shift schedules and staffing. Inmates who wished to do so could use this information to predict staffing levels on the various units of WSPF at particular times and on particular days. Plaintiff's unsupported assertion that he needs the multi-log documents to show that defendants "lied in their discovery" is insufficient to outweigh defendants' legitimate security concerns.

Dkt. 45: Defendants' Motion for a Protective Order

Defendants ask this court to issue an order barring plaintiff from filing more discovery requests. As of March 1, 2013, plaintiff had filed three sets of discovery requests; in response,

defendants have produced 198 pages of discovery responses and 1,646 pages of responsive documents. According to defendants, many of plaintiff's requests have been overly broad, repetitive, and intended to harass or embarrass defendants. Having reviewed plaintiff's third set of discovery requests, I agree with defendants. Plaintiff is just re-tilling old ground. His discovery requests have become burdensome and harassing.

Nonetheless, we have not reached the point in this lawsuit where it is necessary for the court to issue a blanket order stopping any more discovery demands by plaintiff. But we are close. Plaintiff is warned: if, after receiving this order, he requests any more discovery from defendants that: (a) is repetitive; (b) is unduly burdensome; or (c) appears to be intended to harass or embarrass defendants, then defendants will not be required to respond *and* plaintiff will then be barred from seeking any further discovery in this lawsuit. Put another way, if plaintiff seeks more discovery from defendants, he had better have a solid, specific and logical reason for making the request.

Dkt. 48 and Dkt. 56: Plaintiff's Motions for the Appointment of Counsel

Plaintiff has filed two motions, dated March 13, 2013 and April 24, 2013, asking the court to appoint a lawyer to represent him in this case. In his motions, plaintiff asserts that he suffers from mental illness and that his mental health has deteriorated in recent months. According to plaintiff, he is engaging in constant acts of self-harm and attempted suicide. Dkt. 55.

Documents attached to plaintiff's motions show that he was placed in clinical observation at the Columbia Correctional Institution on several dates in January and February 2013. On February 17, 2013, he was transferred to the Wisconsin Secure Program Facility under clinical observation. A mental health status evaluation by psychological services unit staff on that date found him to be

alert and oriented to time, person, place and situation and to have logical, coherent and goal-directed thought processes. No signs of complaints of sensory disturbance or delusional beliefs were noted. Dkt. 48, at p.10.

On March 10, 2013, plaintiff submitted a psychological services request self-reporting that he had an extremely hard time not cutting himself and asking what he should do next. The request form contains a note completed by staff indicating that plaintiff was seen the next day by Dr. Heem, who found no self-harm but noted that plaintiff was upset that he did not have all the legal property and materials that he wanted. Dkt. 55. Sometime between then and April 11, 2013, plaintiff was transferred to the segregation unit in the Green Bay Correctional Institution. On April 11, 2013, plaintiff submitted a psychological service request indicating that he had thoughts at times about killing himself and asked if he was going to be seen by anyone. The next day, he was seen by S. Schmidt, Ph.D.

On April 15, 2013, plaintiff wrote a letter to the court indicating that he was hearing voices in his head telling him to cut himself and kill himself and asking the court to appoint a lawyer to help him with his case. Dkt. 55. On May 1, 2013, plaintiff filed a letter, purportedly written by another inmate and copied by plaintiff, stating that he is unable to litigate this case because of his deteriorating mental health. Dkt. 56.

Plaintiff's assertions of self-harm and deteriorating mental health are disturbing. I encourage plaintiff to continue to request assistance from the prison's psychological services staff, who, from the records plaintiff has submitted, appear to be responding promptly and appropriately to his requests. Notwithstanding the alarming nature of plaintiff's proffers, I am denying plaintiff's request for counsel at this time. Although plaintiff states that he is unable to respond to defendants' motion for

summary judgment because of his deteriorating mental health, no summary judgment motion has been filed yet, although they will be filed very soon. By now, with treatment and monitoring at the institution, plaintiff may find that his condition has sufficiently stabilized so that he can file a response to the defendants' motion when it comes in. Plaintiff's earlier submissions and discovery requests have been rational, legible and goal-directed, and plaintiff has demonstrated his understanding of the issues involved in his case and the proof he needs to succeed at trial.

Additionally, the intake evaluation at WSPF in February 2013 (mentioned above) found plaintiff to be alert and oriented to time, person, place and situation, to have logical, coherent and goal-directed thought processes and to be without complaints of sensory disturbance or delusional beliefs. This all suggests that plaintiff's reported current mental health issues may be temporary. Again, I encourage plaintiff to work with psych staff to obtain the care he needs. If, after receiving defendants' motion for summary judgment and attempting to formulate a response, plaintiff still believes that he is unable to do so without the assistance of counsel, he may renew his request at that time. The court will then look at the defendants' motion and apply the appropriate legal test to determine whether appointment of counsel is necessary at that time.

Dkt. 49: Motion for Return of Legal Documents

On March 22, 2013, plaintiff filed a letter stating that he recently had been transferred from WSPF to GBCI and that the property officer at GBCI was declining to provide him with his legal materials. Plaintiff has asked the court to order GBCI to provide him with all of his legal documents.

I am denying this motion without prejudice. At the time he filed it, plaintiff had only been at GBCI for a week. In this court's experience with state prisoner transfers, it often takes longer than this for an inmate's property to catch up to him after a transfer. If plaintiff still is being denied access to his legal documents now (two months later), then he should report his problems to defendants' attorney, who is in a better position than this court to contact the appropriate individuals at the prison and make sure plaintiff is being provided or has access to his legal materials.

ORDER

It is ORDERED that:

1. Plaintiff Tommie Carter's motion to compel discovery, dkt. 41, is DENIED.
2. Defendants' motion for a protective order barring plaintiff from all discovery, dkt. 45, is DENIED at this time.
3. Plaintiff's motions for the appointment of counsel, dkts. 48 & 56, are DENIED at this time for the reasons stated above.
4. Plaintiff's motion for the return of his legal property, dkt. 49, is DENIED without prejudice.

Entered this 21st day of May, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge