

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

MAURICE A. SMITH,

Plaintiff,

v.

NICOLE WILLIAMS, CHAD FREY,
GENESIS BEHAVIORAL SERVICES, INC.,
CHRISTINE ZIMMERMAN, BRENDA KING,
GINA SINGLETARY, COURTNEY DAVIS,
RICHARD NEUSOME, GLEN FLEMING,
CONSUELO SALFER, and JOHN DOES,

Defendants.

OPINION AND ORDER

12-cv-371-bbc

Plaintiff Maurice A. Smith is a parolee currently residing at a halfway house located in Milwaukee, Wisconsin. In his proposed amended complaint for monetary and injunctive relief, *dk. #3*, plaintiff contends that staff of the halfway house violated his right of access to the courts by interfering with his ability to litigate another lawsuit and his right to equal protection by forcing him to choose between a weekend pass for family visitation or going to the library for legal research.

As a prisoner proceeding in forma pauperis, plaintiff is subject to the 1996 Prisoner Litigation Reform Act, so I must screen his amended complaint and dismiss any claim that is frivolous, malicious or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915A(a), (b). A halfway house comes within the definition of a “jail, prison, or other

correctional facility” for purposes of the PLRA. Witzke v. Femal, 376 F.3d 744, 750, 753 (7th Cir. 2004). When screening a complaint, the court must construe the complaint liberally. Erickson v. Pardus, 551 U.S. 89, 94 (2007).

After reviewing plaintiff’s proposed complaint, I will deny plaintiff leave to proceed on his access to the courts claim because he fails to allege that he was unable to pursue in court any meritorious claim, but I will grant him leave to proceed on his claim that defendants Brenda King, Gina Singletary and Genesis Behavioral Services, Inc. are violating his right to intimate association.

Plaintiff has also filed a motion for preliminary injunction, dkt. #5, based on the same allegations that defendants are interfering with his ability to litigate. This motion will be denied.

In his proposed complaint, plaintiff has alleged the following facts.

ALLEGATIONS OF FACT

Plaintiff is a parolee residing at an Alcohol and Other Drug Abuse halfway house. Defendant Genesis Behavioral Services operates the halfway house under a contract with the Wisconsin Department of Corrections. Defendant Nicole Williams is plaintiff’s parole agent, employed by the Wisconsin Department of Corrections. Defendant Chad Frey is a supervisor for the Wisconsin Department of Corrections in its Division of Community Corrections. Defendants Gina Singelton, Christine Zimmerman, Brenda King, Courtney Davis, Richard Neusome, Glen Fleming, Consuelo Salfer, Linda McCoy and the John Doe defendants are all employees of Genesis Behavioral Services. Singelton is a compliance

officer, Zimmerman is a program coordinator, King is an assistant program coordinator and Davis is a corporate liaison. (Plaintiff does not identify the positions of Neusome, Fleming, Salfer, McCory or the John Doe defendants.)

The halfway house permits plaintiff to leave the facility only with permission from one of the staff. Plaintiff needed to leave the facility regularly because he was “immersed in litigation” and needed to do legal research. He does not identify any specific case or the nature of the cases or claims, but he has filed other complaints in this court. In Smith v. Wallace, Case No. 11-cv-646-bbc (W.D. Wis.), plaintiff has been permitted to proceed on claims that staff at Chippewa Valley Correctional Treatment Facility violated his right of access to the courts.

On May 17, 2012, plaintiff engaged in a conversation with other residents about the grievance process in the halfway house. As plaintiff was explaining to the others his understanding of how the process worked, defendant Neusome walked into the room and overheard the conversation. Neusome then informed defendants Zimmerman and King that plaintiff “was trying to start a boycott.” Defendants King, Zimmerman, Salfer and Davis confronted plaintiff in King’s office, accusing him of trying to start trouble within the facility. Plaintiff alleges that from this point on defendants harbored animosity towards him, which motivated them to interfere with his ability to litigate his cases in various ways.

Plaintiff discusses three incidents at the halfway house. On May 25, 2012, plaintiff was “disallowed to utilize a provision provided for the development of adequate, meaningful, and effective documents for the courts” by defendant Zimmerman. (He does not explain what Zimmerman did.) Plaintiff alleges that Zimmerman’s interference caused him to miss

a deadline to file a summary judgment motion. However, the deadline for summary judgment motions in Smith v. Wallace is not until November 16, 2012. Smith v. Wallace, Case No. 11-cv-646-bbc, Pretrial Conf. Order, dkt. #20. Plaintiff has not identified any other civil case in which he would need to file a motion for summary judgment.

The second incident occurred on June 2, 2012, when defendants imposed “a campaign of harassment and interference . . . upon plaintiff’s personal effort to continue his legal work.” Plaintiff does not make clear which defendants were involved in the June 2 incident or offer any details about the nature of the actions that he believes interfered with his ability to perform legal work on this date.

The third incident occurred on Saturday, June 21, 2012. By this time plaintiff had “phased up,” attaining a status that gave him the privilege of leaving the facility to visit family members on the weekends. On this Saturday, however, plaintiff was forced to choose between a pass for legal research and a pass to visit his family. Defendant Brenda King told him that he would be granted permission to leave to pursue one of these activities, at his choice, but not both. One week earlier, plaintiff had written a complaint about being forced to choose between legal research and family visits, which defendant Gina Singletary denied.

OPINION

A. Denial of Access to the Courts

Under Fed. R. Civ. P. 8(a)(2), a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” This means that “the complaint must describe the claim in sufficient detail to give the defendant fair notice of what the . .

. claim is and the grounds upon which it rests.” EEOC v. Concentra Health Services, Inc., 496 F.3d 773, 776 (7th Cir. 2007).

Prisoners have a constitutional right to “meaningful access to the courts” to pursue post conviction remedies and to challenge the conditions of their confinement. Bounds v. Smith, 430 U.S. 817, 821-22 (1977). A prisoner seeking to bring a claim for denial of the right of access to the courts must include allegations in the complaint that explain how the defendants actions hindered the prisoner’s ability to challenge his conviction or conditions of confinement. Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006). The injury can be forward-looking, if “systemic official action” prevents the prisoner from litigating a present or future lawsuit, or backward-looking, if the defendants’ actions caused the prisoner to lose a lawsuit or a chance to sue. Christopher v. Harbury, 536 U.S. 403, 413-14 (2002). A plaintiff must at least (1) describe an underlying non-frivolous claim and (2) explain how his ability to file or litigate the claim was or will be lost or impeded. Id. at 415-16.

The allegations in the proposed complaint are not specific enough to give defendants notice of the basis of plaintiff’s claim, for several reasons. First, plaintiff does not identify the specific actions defendants took that he believes interfered with his right of access to the courts. The vast majority of plaintiff’s complaint includes conclusory allegations such as “multiple attempts have been made by the defendants . . . to delay and interrupt my court access.” As I explained to plaintiff previously, that is not sufficient.

Second, plaintiff’s allegations do not identify any “actual injury” to a legal claim that plaintiff suffered as a result of defendants’ actions. The complaint cannot support a forward-looking claim, because plaintiff does not allege that defendants maintain a policy that

interferes unreasonably with the parolee residents' ability to litigate cases or that defendants are engaged in an ongoing practice that interferes with his ability to litigate. His allegations also cannot support a backward-looking claim, because he has not identified the nature of the litigation in which he was involved at the time of defendants' conduct, how his litigation was harmed by their conduct or what claims he lost as a result.

The closest plaintiff comes to a specific allegation of harm is to imply that he missed a summary judgment deadline. However, plaintiff has missed no deadlines and lost no remedy to which he was entitled in Smith v. Wallace, Case No. 11-cv-646-bbc (W.D. Wis.).

A Rule 8 dismissal is without prejudice, so plaintiff may amend his complaint to address these deficiencies. If plaintiff chooses to file an amended complaint, he should start from scratch, laying out the facts of the case in separately numbered paragraphs. With respect to each incident, plaintiff should explain (1) what legal case or cases he was working on; (2) the specific actions were taken by each specific defendant; and (3) how those actions caused him to miss specific deadlines or lose the ability to pursue specific remedies.

B. Choice Between Family Visit and Legal Research

Plaintiff has also alleged that he was "made to choose between [his] . . . right to court access. . . and an afforded opportunity to visit [his] family which would be a protected right under equal protection." Although these allegations fail to state a claim for a denial of equal protection, they are sufficient at this early stage to state a claim for a violation of plaintiff's constitutional right to freedom of association.

The Fourteenth Amendment provides that "no state shall . . . deny to any person

within its jurisdiction the equal protection of the laws.” U.S. Const. am. XIV. To state an equal protection claim, plaintiff must show “that he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Plaintiff alleges that defendants violated his right to equal protection by forcing him to choose between family visits and legal research. This type of equal protection claim is called a “class-of-one” claim because plaintiff alleges that he is being personally singled out for unfavorable treatment, rather than alleging that he is being treated differently because of his membership in a larger class, such as his race or sex. Id.

Plaintiff’s allegations fail to state an equal protection claim because he does not identify any other parolee who received weekend passes for both the library and family visitation. Without alleging that defendants treated him differently from some similarly situated person (or differently from *everyone* else), plaintiff has no class-of-one claim for unequal protection. Geinosky v. City of Chicago, 675 F.3d 743, 748-49 (7th Cir. 2012); LaBella Winnetka, Inc. v. Village of Winnetka, 628 F.3d 937, 941-42 (7th Cir. 2010).

In Overton v. Bazzeta, 539 U.S. 126 (2003), the Supreme Court assumed that prisoners retain some right of intimate association while incarcerated. However, prison restrictions on family visitation will be upheld so long as they are rationally related to legitimate penological interests. Overton, 539 U.S. at 132. Courts consider four factors in determining whether a regulation meets this standard: (1) whether the regulation is rationally related to a legitimate and neutral government objective; (2) whether an inmate has alternative means of exercising the right in question; (3) the impact accommodation of

the asserted right will have on the operation of the prison; and (4) whether there are alternatives to the regulation that show that it is an exaggerated response to prison concerns. Lindell v. Frank, 377 F.3d 655, 657 (7th Cir. 2004) (citing Turner v. Safley, 482 U.S. 78, 89-91(1987)).

Plaintiff does not allege whether he chose to visit his family or the library on June 21, 2012. If he chose to visit his family, his right to association was not violated. At this point, I will draw the inference favorable to plaintiff that he chose to perform legal research. In any case, one can reasonably infer from the complaint that the halfway house has established a general policy to permit residents only one pass each weekend, and plaintiff may seek injunctive relief against the policy.

Defendants may have legitimate penological reasons for restricting resident parolees to one pass each weekend, but I cannot assume this to be true at the screening stage. Id. at 657-58. Therefore, I will permit plaintiff to proceed on his claim that defendants King, Singletary and Genesis Behavior Services are violating his constitutional right to freedom of association by requiring him to choose between a pass of legal research and for family visitation. Plaintiff should be aware that at later stages of the litigation, he will have to prove that the restriction is not supported by legitimate penological interests.

Plaintiff has not alleged that any of the other defendants were involved in this decision or policy, so those defendants must be dismissed.

C. Motion for Preliminary Injunction

Plaintiff has also filed a motion for preliminary injunction, dkt. #5, along with a

declaration in support of the motion, dkt. #6, and a legal brief, dkt. #7. Plaintiff seeks an injunction requiring defendants to provide him with more effective access to the courts, although he does not specify what he wants the court to order the defendants to do.

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (citation omitted). To obtain preliminary injunctive relief, plaintiff must show some likelihood of success on the merits on his access to the courts claim, that he has no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied and that an injunction is in the public interest. Ezell v. City of Chicago, 651 F.3d 684, 694 (7th Cir. 2011). Plaintiff's motion does not warrant a hearing at this time, as he has shown no likelihood of success on the merits of his access to the courts claim or any potential for irreparable harm.

Like the complaint, plaintiff's declaration does not identify any specific actions or policies adopted by defendants. He makes only the conclusory allegation that defendants have not "provided [plaintiff] with effective and meaningful court access." Moreover, plaintiff has not alleged any potential injury. He states that defendants are causing him to "miss deadlines established by the court scheduling" in Smith v. Wallace and that he has been unable "to prepare for hearings, develop documents and perform critical research." However, plaintiff has not identified any specific deadlines, hearings or documents. As discussed above, plaintiff has missed no relevant deadlines in Smith v. Wallace, his only request for an extension of time was granted and the rights he is asserting were not prejudiced in any way. Because plaintiff has failed to show that he is likely to succeed on the merits or that he will

suffer irreparable harm, I will deny his motion for a preliminary injunction.

ORDER

IT IS ORDERED that

1. Plaintiff Maurice A. Smith's motion for leave to proceed in forma pauperis is GRANTED IN PART and DENIED IN PART, as follows:

a. plaintiff is GRANTED leave to proceed on his claim that defendants Brenda King, Gina Singletary and Genesis Behavioral Systems, Inc. violated his right to intimate association;

b. plaintiff is DENIED leave to proceed in all other respects and the complaint is DISMISSED without prejudice as to defendants Nicole Williams, Chad Frey, Christine Zimmerman, Courtney Davis, Richard Neusome, Glen Fleming, Consuelo Salfer and the John Doe defendants.

2. Plaintiff's motion for a preliminary injunction, dkt. #5, is DENIED.

3. Copies of plaintiff's complaint and this order are being forwarded to the United States Marshall for service on defendants.

4. For the remainder of the lawsuit, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not

have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2).

Entered this 9th day of August, 2012.

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