IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHRISTOPHER SCOTT ATKINSON,

Plaintiff,

v.

J.C. BROE, K. GARSKA, A. WEBER,
T. ROBERTS and L.C. WARD,

Defendants.

OPINION AND ORDER

15-cv-386-bbc

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Pro se plaintiff Christopher Scott Atkinson, a prisoner at the Federal Correctional Institution at Oxford, Wisconsin, has filed a proposed complaint under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), in which he alleges that prison officials violated his rights under the First Amendment and the due process and takings clauses of the Fifth Amendment when they removed funds from his prison trust fund account without his permission and threatened retaliation if he filed a complaint. Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. § 1915A.

Having reviewed the complaint, I conclude that plaintiff may proceed on a First Amendment retaliation claim against defendants Garska, Weber, Broe, Roberts and Ward; a Fifth Amendment due process claim against defendants Garska, Roberts and Ward; and a Fifth Amendment takings clause claim against defendant Garska. Plaintiff's equal

protection claim will be dismissed for failure to state a claim for which relief may not be granted.

Plaintiff alleges the following facts in his proposed complaint.

ALLEGATIONS OF FACT

Plaintiff Christopher Scott Atkinson is incarcerated at the Federal Correctional Institution in Oxford, Wisconsin. Defendants are all employees at the institution. Defendant J.C. Broe is a unit manager responsible for determining the amount an inmate is able to contribute to the Inmate Financial Responsibility Program. (The Bureau of Prisons promulgated regulations and developed the program to encourage financial responsibility, rehabilitation and reformation. 28 C.F.R. § 545.10; Johnpoll v. Thornburgh, 898 F.2d 849, 851 (2d Cir. 1990). For example, the Bureau of Prisons uses the program to help insure that inmates make good-faith progress toward satisfying their court-ordered obligations or restitution. McGhee v. Clark, 166 F.3d 884, 886 (7th Cir. 1999).) Defendants K. Garska, plaintiff's unit counselor, and defendant A. Weber, his unit case manager, are on the unit management team that is responsible for creating and terminating Inmate Financial Responsibility Program contracts and making any necessary changes in the Sentry database regarding the inmates' participation in the program.

Pursuant to a signed agreement with plaintiff, the prison withdrew quarterly payments of $25 from plaintiff's prison trust fund account for the Inmate Financial Responsibility Program. (Although the Court of Appeals for the Seventh Circuit has held

that participation in the program is voluntary, inmates who do not participate may lose a number of privileges, including furloughs, higher commissary spending limits and access to better housing and community-based programs. United States v. Boyd, 608 F.3d 331, 333 (7th Cir. 2010) (citing 28 C.F.R. § 545.11(d).)

Because plaintiff had to make an unexpected medical co-payment in April 2014, his prison trust fund account had insufficient funds to cover his quarterly financial responsibility program payment due on June 10, 2014. When plaintiff failed to make the payment, defendants Garska and Weber summoned plaintiff to their office to ask plaintiff to sign a single payment agreement authorizing a one-time deduction from plaintiff's trust fund account to meet his financial responsibility program obligations. Plaintiff refused to sign the form and requested an exemption from the financial responsibility program on the ground of financial hardship. Defendant Garska insisted that plaintiff would have $2 left in his account after the payment and stated that plaintiff could call home for more help if he needed it. Plaintiff argued with defendants Garska and Weber about his ability to make the program payment and refused repeatedly to authorize the withdrawal from his prison trust fund account. He also accused Garska and Weber of abusing their discretion under the program and failing to administer their job responsibilities.

On July 10, 2014, plaintiff discovered that the $25 program payment had been withdrawn from his trust fund account without his consent. When he complained to defendants Garska and Weber, they told him to file a federal tort claim. On July 14, 2014, plaintiff filed an "informal resolution form" to which defendant Garska responded that

"Agreement with the [program] contract is mute, as the contract is necessary per BOP Policy in relationship to a Court Order." Dkt. #1, exh. 1, at 1. After plaintiff asked Garska for a formal complaint form, defendant Weber told plaintiff that if he persisted in filing a complaint against Garska, he would receive "IFRP reprisals for refusal." Plaintiff filed a complaint against defendants Garska, Weber and Broe on July 27, 2014, and defendant Roberts rejected it on July 29, 2014, stating that plaintiff could not request a refund, damages or a higher status job and was limited to requesting a renegotiated financial responsibility agreement.

Also on July 29, 2014, plaintiff was brought to see defendant Broe, who explained Roberts's decision and offered plaintiff an Inmate Financial Responsibility Exemption for a single quarter if he agreed not to resubmit his complaint. Plaintiff refused to stop pursuing his complaint. When plaintiff asked Garska for another complaint form, Garska offered him an exemption for two program quarter payments. Plaintiff refused, and defendant Garska told him that he would be placed in program refusal status. When the "reprisals" were implemented, plaintiff was not behind on his program payments because the next quarterly payment was due in September 2014.

Defendant Roberts refused to accept any further complaints from plaintiff requesting anything but the renegotiation of his program agreement. On August 1, 2014, plaintiff filed a complaint against Roberts with the associate warden, who referred plaintiff's allegations of Roberts's misconduct for investigation and allowed plaintiff to resubmit his complaints against Garska, Weber and Broe.

In a complaint dated August 1, 2014, plaintiff accused defendants Garska, Weber and Broe of fraudulently withdrawing money from his trust fund account and retaliating against him by entering him in program refusal status when he complained. Dkt. #1, exh. #6. On August 22, 2014, defendant Warden Ward rejected plaintiff's complaints and requests for relief, stating that the $25 had been withdrawn from his prison trust account as a result of an administrative processing error and that plaintiff had lost privileges because he refused to sign a revised financial responsibility plan. Dkt. #1, exh. #7. Ward did not address plaintiff's complaints of retaliation. Id.

Defendant Roberts has accepted complaints requesting monetary relief from other inmates. Defendant Garska has not forced other inmates to make payments after they have refused to participate in the financial responsibility program.

OPINION

A. Fifth Amendment Claims

Plaintiff alleges that defendants Garska, Roberts and Ward denied him due process under the Fifth Amendment and that defendant Garska illegally seized funds from his trust account and denied him equal protection in violation of the Fifth Amendment. Because plaintiff is a federal prisoner, he correctly identifies the source of his rights as the Fifth Amendment, which applies to federal government officials. Although the Fifth Amendment does not contain an equal protection clause (which is found in the Fourteenth Amendment), the Supreme Court has held that the amendment's due process clause prohibits the federal

government from "engaging in discrimination that is 'so unjustifiable as to be violative of due process.'" Schlesinger v. Ballard, 419 U.S. 498, 500 n.3 (1975) (quoting Bolling v. Sharpe, 347 U.S. 497, 499 (1954)). See also United States v. Brucker, 646 F.3d 1012, 1017 (7th Cir. 2011) ("'The approach to Fifth Amendment equal protection claims has been precisely the same as to equal protection claims under the Fourteenth Amendment.'") (quoting U.S. v. Nagel, 559 F.3d 756, 760 (7th Cir. 2009). I construe plaintiff's allegations of "illegal seizure" to be an attempt to state a claim under the takings clause of the Fifth Amendment. I will address each claim in turn.

1. Due process

A due process analysis generally 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)). (Although these cases involved Fourteenth Amendment due process, the Court of Appeals for the Seventh Circuit has applied a Fourteenth Amendment due process analysis to Fifth Amendment due process claims. Del Raine v. Williford, 32 F.3d 1024, 1046 (7th Cir.1994); Wikberg v. Reich, 21 F.3d 188, 190 (7th Cir. 1994).) A plaintiff cannot state a due process claim in cases in which both a pre-deprivation process was unavailable or impractical (such as "random and unauthorized" conduct) and a post-deprivation remedy is available. Armstrong

v. Daily, 786 F.3d 529, 539 (7th Cir. 2015); LaBella Winnetka, Inc. v. Village of Winnetka, 628 F.3d 937, 944 (7th Cir. 2010). Finally, in order to state claims under Bivens, plaintiff must explain the personal involvement of each defendant in each claim. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). See also Vance v. Rumsfeld, 701 F.3d 193, 203 (7th Cir. 2012) ("[S]upervisory personnel are accountable for what they do, but they are not vicariously liable for what their subordinates do.").

Plaintiff alleges that (1) defendant Garska removed funds from plaintiff's trust fund account without consent; (2) defendant Roberts covered up Garska's actions by refusing to accept plaintiff's inmate complaint unless plaintiff changed the relief he was seeking; and (3) defendant Ward knew that defendant Garska withdrew plaintiff's money without his consent but falsely stated that the removal of funds from plaintiff's trust fund account was a processing error and refused to correct it. I conclude that plaintiff's allegations state a claim against defendants Garska, Roberts and Ward upon which relief may be granted under the due process clause of the Fifth Amendment.

At this stage of the proceedings, I can infer that plaintiff had a constitutionally protected property interest in the funds in his prison trust account. Campbell v. Miller, 787 F.2d 217, 222 (7th Cir. 1986) (generally a "prisoner has a property interest in the funds on deposit in his prison account"). However, plaintiff will have to show that his property interest extended to the $25 that Garska withdrew from his account to satisfy his obligations to the financial responsibility program. Id. ("For purposes of the Due Process Clause, property interests must be found in state or federal law."). Assuming he can make this

showing, plaintiff must demonstrate that procedural protections were available and defendants failed to provide them. Plaintiff does not identify any particular process that defendants should have provided before they withdrew his funds. However, reading plaintiff's allegations liberally, I can infer at this point that some process should have been provided, either pursuant to the financial responsibility program agreement or some other institutional procedure. Plaintiff also sufficiently alleges personal involvement on the part of each defendant because he says that defendants Roberts and Ward knew that Garska withdrew the money without plaintiff's consent and failed to stop it even though they had the power to do so.

As a final matter, I note that there is some question about whether defendants' conduct was random and unauthorized and whether plaintiff had a post-deprivation remedy available to him. In a recent opinion that seems to be in tension with earlier Supreme Court precedent, the Court of Appeals for the Seventh Circuit stated that "an official's subversion of established state procedures is not 'random and unauthorized' misconduct" that can be remedied by a post-deprivation remedy. Armstrong, 786 F.3d at 543-44 (discussing Parratt v. Taylor, 451 U.S. 527 (1981) and Hudson v. Palmer, 468 U.S. 517 (1984) and noting that action is not unauthorized in cases in which loss occurs through established state procedure, even if mistake was made in carrying out procedure). The scope of Armstrong is not entirely clear because it involved the destruction of exculpatory evidence that rendered a fair trial impossible, but the holding does appear to offer some support for plaintiff's claim. Defendants are free to raise the issue at summary judgment or trial, but at this early stage

of the proceedings, I can infer that defendants' conduct does not qualify as "random and unauthorized" because plaintiff alleges that defendants subverted an established process for withdrawing trust account funds.

In any event, I note that even if defendants' acts were "random and unauthorized," plaintiff may still be able to state a claim for which relief may be granted because there is some question about whether he has an available post-deprivation remedy. The Federal Tort Claims Act generally provides a remedy for individuals, including federal prisoners, seeking recovery for damages caused by the negligent or wrongful act of an employee of the federal government. 28 U.S.C. §§ 2671-2680; Federal Deposit Insurance Corp. v. Meyer, 510 U.S. 471, 477 (1994); United States v. Muniz, 374 U.S. 150 (1963). However, there is one exception. Section 2680(c) of the Act bars recovery for "[a]ny claim arising in respect of . . . the detention of any goods, merchandise, or other property by . . . any other law enforcement officer," and the Supreme Court has made clear that "other law enforcement officers" include Bureau of Prison employees. Ali v. Federal Bureau of Prisons, 552 U.S. 214, 228 (2008). As a result, it is not clear whether federal prisoners have any tort remedies for the intentional deprivation of their property by prison officials. Boston & Manville at 403. Although it is possible that there may be some other administrative remedy available to plaintiff for the recovery of his trust account funds, id. (discussing 28 U.S.C. § 1491(a)(1) and 31 U.S.C. § 3724 as possible remedies), I see no remedies that obviously apply, so that determination is best made later in the lawsuit when the record has been more fully developed.

2. Takings clause

Plaintiff alleges that defendant Garska took money from his trust fund account without his consent and has not returned it. The takings clause provides that no private property shall be taken for public use without just compensation. Sorrentino v. Godinez, 777 F.3d 410, 413 (7th Cir. 2015) (citing Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985)). Although a claim under the takings clause may afford plaintiff the same relief as his claim under the due process clause, the two claims are distinct and have slightly different standards. Id.; Wield v. Raemisch, 296 F. App'x 534, 535 (7th Cir. 2008) (nonprecedential opinion) (noting that denial of adequate procedural protections is different from being permanently deprived of release account funds). Because the takings clause does not require the government to pay compensation prior to or at the same time as a taking, plaintiff cannot claim a violation until he has used any "adequate procedure" available for seeking compensation and has been denied just compensation. Williamson County, 473 U.S. at 195. See also Sorrentino, 777 F.3d at 413 (takings clause claim not ripe until plaintiff has exhausted all available relief and been denied just compensation). However, exhaustion is not required in circumstances in which the procedure is futile or otherwise inadequate. Daniels v. Area Plan Commission of Allen County, 306 F.3d 445, 457-58 (7th Cir. 2002).

As discussed above, it is unclear at this stage whether plaintiff has an adequate procedure available to him for seeking compensation for the funds that were removed from

his trust fund account. Accordingly, I will allow plaintiff to proceed on a claim against defendant Garska under the takings clause.

3. Equal protection

With respect to his equal protection claim against defendant Garska, plaintiff does not contend that defendant made the unauthorized withdrawal because of plaintiff's race or any other reason subject to heightened scrutiny. Plaintiff's only allegation is that defendant has not forced other "similarly situated" inmates to make payments after they refused to participate in the financial responsibility program. This is what the courts refer to as a "class of one" claim because plaintiff alleges that defendants treated him differently not because he belonged to a particular group, but because of some personal dislike for him. E.g., Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

Plaintiff's allegations are not sufficient to state a claim upon which relief may be granted. First, as I have noted in other cases, it is unlikely that a plaintiff may maintain a class-of-one claim in the prison context. Knowlin v. Gray, No.12-cv-926-bbc, 2013 WL 541525, *3 (W.D. Wis. Feb. 13, 2013); Jackson v. Flieger, 12-cv-220-bbc, 2012 WL 5247275, *4 (W.D. Wis. Oct. 23, 2012); Upthegrove v. Holm, No. 09-cv-206-bbc, 2009 WL 1296969, *1 (W.D. Wis. May 7, 2009). In Engquist v. Oregon Department of Agriculture, 553 U.S. 591 (2008), the Supreme Court held that a plaintiff cannot bring a class-of-one claim under certain circumstances involving discretionary decision making, such as employment. See also Abcarian v. McDonald, 617 F.3d 931, 939 (7th Cir. 2010)

("[I]nherently subjective discretionary governmental decisions may be immune from class-of-one claims."); United States v. Moore, 543 F.3d 891, 898-901 (7th Cir. 2008) (no class-of-one claim for discriminatory prosecution). See also Dawson v. Norwood, 2010 WL 2232355, *2 (W.D. Mich. 2010) ("The class-of-one equal protection theory has no place in the prison context where a prisoner challenges discretionary decisions regarding security classifications and prisoner placement."); Alexander v. Lopac, 2011 WL 832248, *2 (N.D. Ill. 2011) (applying Engquist in prison context); Russell v. City of Philadelphia, 2010 WL 2011593, at *9 (E.D. Pa. 2010) (same). Like the employment context, decisions made in the context of running a prison "by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments." Engquist, 553 U.S. at 603.

However, even if I were to assume that plaintiff could bring a class-of-one claim, he could not prevail on such a claim without a showing that he "was intentionally treated differently from other similarly situated individuals and that there was no rational basis for this difference in treatment." Thayer v. Chiczewski, 697 F.3d 514, 531-32 (7th Cir. 2012). At the pleading stage, the plaintiff must "'allege facts sufficient to overcome the presumption of rationality that applies to government classifications.'" St. John's United Church of Christ v. City of Chicago, 502 F.3d 616, 639 (7th Cir. 2007) (quoting Wroblewski v. City of Washburn, 965 F.2d 452, 460 (7th Cir. 1992)). Plaintiff has not met that standard in this case. It is impossible to infer from the few facts he alleges that defendant Garska did not have a rational basis for his decision. Accordingly, I am dismissing plaintiff's equal

protection claim against defendant Garska for failure to state a claim upon which relief may be granted.

B. First Amendment Retaliation

Plaintiff accuses all five defendants of retaliating against him for complaining about the unauthorized withdrawal from his trust fund account, in violation of the First Amendment. To prevail on a retaliation claim, a plaintiff must prove three things: (1) he was engaging in activity protected by the Constitution; (2) the defendant's conduct was sufficiently adverse to deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) the defendant subjected the plaintiff to adverse treatment because of the plaintiff's constitutionally protected activity. Gomez v. Randle, 680 F.3d 859, 866-67 (7th Cir. 2012); Bridges v. Gilbert, 557 F.3d 541, 555-56 (7th Cir. 2009). To determine whether speech is protected by the First Amendment, this court must apply the four-part test set forth in Turner v. Safley, 482 U.S. 78, 85 (1987): (1) whether a valid, rational connection exists between the regulation and a legitimate government interest behind the rule; (2) whether alternative means exist for exercising the right in question that remain available to prisoners; (3) whether accommodation of the asserted constitutional right would have a negative impact on guards, other inmates and the allocation of prison resources; and (4) whether obvious, easy alternatives exist as evidence that the regulation is not reasonable. Tarpley v. Allen County, Indiana, 312 F.3d 895, 898 (7th Cir. 2002).

I understand plaintiff to be alleging that the following conduct qualifies as retaliation under the First Amendment:

1. Defendant Garska intentionally submitted a false authorization form in plaintiff's name, allowing the withdrawal of plaintiff's trust account funds, because plaintiff told defendants Garska and Weber that they were abusing their discretion and failing to do their jobs.

2. Defendant Garska placed him in program refusal status, which led to reprisals, because he filed a grievance against defendants Garska, Weber and Broe.

3. Defendants Weber and Broe agreed with and did not stop Garska from placing plaintiff in refusal status because he filed a grievance.

4. Defendant Roberts refused to provide him with certain remedies he was entitled to because he filed a grievance against defendants Garska, Weber and Broe.

5. Defendant Ward "turned a blind eye" and failed to investigate plaintiff's retaliation claims against defendants Garska, Weber, Broe and Roberts because he objected to plaintiff's complaints, in violation of the First Amendment.

It is reasonable to infer at this stage that plaintiff was engaging in protected activity when he verbally complained to Garska and Weber and later filed written complaints against Garska, Weber, Broe and Roberts. In the context of a retaliation claim, a prisoner's right to file a grievance or lawsuit has been recognized as a constitutionally protected activity. Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005); Walker v. Thompson, 288 F.3d 1005, 1009 (7th Cir. 2002). See also Pearson v. Welborn, 471 F.3d 732, 741 (7th Cir.

2006) ("We are also unconvinced that the form of expression—i.e., written or oral—dictates whether constitutional protection attaches."). In addition, plaintiff says that he suffered adverse consequences in the form of a loss of funds, "reprisals" (which I understand to mean a loss of privileges associated with the financial responsibility program), a lack of access to remedies that otherwise would have been available to him and not having his complaint addressed by the warden. At this stage of the proceedings, I can infer from plaintiff's allegations that these losses were sufficiently severe to deter a reasonable person from exercising his rights in the future. Finally, I must accept as true plaintiff's allegations that defendants took these actions against him because he complained about their actions. Carlson v. CSX Transportation, Inc., 758 F.3d 819, 828 (7th Cir. 2014).

As with the Fifth Amendment, to state a Bivens claim based on the First Amendment, plaintiff must explain the personal involvement of each defendant in each claim. Iqbal, 556 U.S. at 677. Plaintiff alleges what may be considered direct involvement on the part of Garska and Roberts: that Garska withdrew his funds without permission and placed him on refusal status and that Roberts prevented him from seeking certain remedies. However, he states that defendants Weber and Broe "allowed" or "condoned" Garska's actions and defendant Ward "turned a blind eye" to the retaliation and refused to investigate it. Defendants may not be held liable under Bivens merely because they supervised those who allegedly committed wrongful acts or acted as messengers for those persons. Iqbal, 556 U.S. at 677 ("[P]urpose rather than knowledge is required to impose Bivens liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged

with violations arising from his or her superintendent responsibilities."). Further, not everyone "who knows about a violation of the Constitution, and fails to cure it, has violated the Constitution himself." George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007). See also Burks v. Raemisch, 555 F.3d 592, 596 (7th Cir. 2009) (rejecting "contention that any public employee who knows (or should know) about a wrong must do something to fix it" and noting that "there is no general duty to rescue").

Because plaintiff states that defendants Weber and Broe knew about and agreed with Garska's actions, told him not to complain and had the same power as Garska to create or stop a financial responsibility program contract and to set the terms of an inmate's participation in the program, his allegations are sufficient at this early stage to support the view that Weber and Broe could have taken action to stop the unauthorized withdrawal and plaintiff's placement on refusal status but failed to do so because plaintiff had complained.

With respect to defendant Ward's personal involvement, plaintiff alleges that he complained to defendant Roberts and later to the associate warden about the unauthorized withdrawal and retaliation and that defendant Ward "turned a blind eye" and failed to investigate his retaliation complaints. Ward can not be held liable for failing to intervene because he had delegated the decision to other staff members (such as Roberts or the associate warden) and declined to conduct his own investigation. Burks, 555 F.3d at 595 ("Public officials do not have a free-floating obligation to put things to rights. . . . Bureaucracies divide tasks; no prisoner is entitled to insist that one employee do another's job."); George, 507 F.3d at 609 (ruling against prisoner's administrative complaint about

completed act of misconduct does not violate constitution). However, "a prison official may not retaliate against a prisoner because that prisoner filed a grievance," and "[t]his is so even if the adverse action does not independently violate the Constitution." DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). Documents attached to the complaint confirm that Ward addressed and responded to plaintiff's complaints about the withdrawal but not those related to retaliation, even though plaintiff filed both complaints simultaneously. Liberally construing plaintiff's allegations in his favor, I may infer at this preliminary stage that Ward was aware of plaintiff's retaliation grievance and had the responsibility to address it but refused to do so because he objected to its filing.

Accordingly, I will allow plaintiff to proceed on a claim that defendants Garska, Weber, Roberts, Broe and Ward retaliated against him for filing a grievance, in violation of the First Amendment. However, in going forward with this claim, plaintiff should keep in mind that a claim for retaliation presents a classic example of a claim that is easy to allege but hard to prove. Many prisoners make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove his claim with the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007).

First, plaintiff will have to come forward with evidence either at summary judgment or at trial showing that each defendant knew he had filed a grievance or engaged in other protected speech or conduct. Salas v. Wisconsin Dept. of Corrections, 493 F.3d 313 (7th

Cir. 2007) (in retaliation case, plaintiff must show that defendant knew that plaintiff was engaging in protected conduct). Second, plaintiff will have to prove that the conduct of each defendant was sufficiently adverse to deter a person of "ordinary firmness" from filing a grievance. Finally, he will have to show that defendants withdrew his trust account funds, withheld program privileges, limited his administrative remedies or failed to address his retaliation complaints because plaintiff had complained rather than because defendants believed that plaintiff violated program or prison rules. He may prove defendants' retaliatory intent in various ways. For example, he may show that similarly situated prisoners not engaging in similar protected conduct were treated better than he was, cf. Scaife v. Cook County, 446 F.3d 735, 739 (7th Cir. 2006), or point to other evidence suggesting a retaliatory motive, such as suspicious timing or statements by defendants suggesting that they were bothered by the protected conduct. E.g., Mullin v. Gettinger, 450 F.3d 280, 285 (7th Cir. 2006); Culver v. Gorman & Co., 416 F.3d 540, 545-50 (7th Cir. 2005). However, even when the exercise of the right and the adverse action occur close in time, this is rarely enough to prove an unlawful motive without additional evidence. Sauzek v.Exxon Coal USA, Inc., 202 F.3d 913, 918 (7th Cir. 2000) ("The mere fact that one event preceded another does nothing to prove that the first event caused the second."). Finally, plaintiff may support his claim by coming forward with evidence that defendants are lying about the reasons that plaintiff suffered a particular consequence.

ORDER

IT IS ORDERED that

1. Plaintiff Christopher Scott Atkinson is GRANTED leave to proceed on the following claims:

a. Defendant K. Garska, T. Roberts and L.C. Ward failed to provide plaintiff due process under the Fifth Amendment when withdrawing funds from his prison trust fund account without his consent;

b. Defendant Garska violated plaintiff's rights under the takings clause of the Fifth Amendment when defendant took money from plaintiff's trust fund account without authorization and did not return it.

c. Defendant Garska made an unauthorized withdrawal from plaintiff's prison trust fund account because plaintiff complained to Garska about abusing his discretion and not doing his job with respect to plaintiff's participation in the inmate financial responsibility program, in violation of the First Amendment;

d. Defendant Garska violated plaintiff's rights under the First Amendment by placing him on refusal status in the inmate financial responsibility program for filing a grievance about the unauthorized withdrawal from his prison trust fund account;

e. Defendants A. Weber and J.C. Broe violated plaintiff's rights under the First Amendment by agreeing with and not stopping plaintiff's placement in refusal status because he filed a grievance.

f. Defendant Roberts violated plaintiff's rights under the First Amendment by refusing to allow plaintiff to pursue certain remedies because he filed a grievance.

g. Defendant Ward violated plaintiff's rights under the First Amendment by failing to address plaintiff's retaliation grievance because he objected to plaintiff filing it.

2. Plaintiff is DENIED leave to proceed on all other claims for his failure to state a claim upon which relief may be granted.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer or lawyers will be representing defendants, he should serve the lawyers 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.

4. 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.

5. I am sending copies of plaintiff's complaint and this order to the United States Marshal for service on defendants. Plaintiff should not attempt to serve defendants on his own at this time.

6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 31st day of August, 2015.

BY THE COURT:

/s/

_____
BARBARA B. CRABB
District Judge