

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

JOHNSON W. GREYBUFFALO,

Plaintiff,

v.

JON LITSCHER, KELLI WILLARD WEST,
and GARY BOUGHTON,

Defendants.

ORDER

15-cv-8-bbc

Pro se plaintiff Johnson Greybuffalo is proceeding on claims that defendants Jon Litscher, Gary Boughton and Kelli Willard West are violating plaintiff's rights under the Religious Land Use and Institutionalized Persons Act and the free exercise clause by denying his requests for (1) devotional services for the Native American Church; (2) a separate sweat lodge ceremony for members of the Native American Church; and (3) use of a water drum during group worship. Trial is scheduled for September 7, 2016.

Now plaintiff has filed a document that he calls "Independent action in equity for relief from judgment due to fraud on the court pursuant to F.R.C.P 60(d)(1) & (3)." Dkt. #96. In his brief in support of his motion, plaintiff alleges that defendants failed to disclose until July 7, 2016 a 2011 policy that "describes and discloses that fact the [Wisconsin Department of Corrections] recognizes more than one Native American 'Religion.'" Dkt. #97 at 3. As a result of this alleged "fraud on the court," plaintiff asks that he be allowed

to proceed on two claims that have been dismissed involving his requests for (1) recognition of the Native American Church as a separate “umbrella religion group” under prison policy; and (2) personal use of a gourd rattle and wing fan.

I am construing plaintiff’s filing as a motion for reconsideration and I am denying the motion. To begin with, plaintiff has not shown that defendants committed a fraud on the court or even engaged in discovery misconduct. Although he says that defendants denied the existence of the policy “throughout summary judgment proceedings,” he does not provide any evidence to support that allegation. He cites interrogatory answers dated April 11, 2016, but he did not provide these to the court and they do not appear to be a part of the record. In any event, even if I assume that defendants failed to provide the cited policy to plaintiffs or the court, plaintiff has not shown that the policy has any relevance to this case, let alone that it entitles him to revive two dismissed claims.

I dismissed both of the claims at issue for reasons unrelated to prison policy. With respect to the policy on “umbrella religion groups,” I have explained to plaintiff multiple times that the free exercise clause and RLUIPA protect religious *exercises*. Because recognition as an umbrella group is not a religious exercise in itself, it cannot give rise to a claim under RLUIPA or the free exercise clause. Defendants’ use of religion umbrella groups is relevant only to the extent that the grouping system is preventing plaintiff from engaging in a particular religious exercise.

With respect to plaintiff’s personal use of a gourd rattle and wing fan, I did not allow plaintiff to proceed on that claim because he did not explain how personal possession of any

particular religious item was necessary or even relevant to his religious exercise. Rather, his allegations were related to the reasons he needed the items for group worship. Plaintiff failed to provide the missing information in his amended complaint or in his summary judgment filings. Even now, plaintiff still does not explain why these items have religious significance outside group worship.

Because I see no way that the policy plaintiff identifies could have had any effect on the decisions to dismiss these claims, I am denying plaintiff's motion.

ORDER

IT IS ORDERED that plaintiff Johnson Greybuffalo's motion for "Independent action in equity for relief from judgment due to fraud on the court pursuant to F.R.C.P 60(d)(1) & (3)," dkt. #96, which I am construing as a motion for reconsideration, is DENIED.

Entered this 16th day of August, 2016.

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