

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

VINCENT L. AMMONS,

Plaintiff,

v.

GARY BURKUM and CAPTAIN
MARC CLEMENTS,

Defendants.

ORDER

98-C-861-C

This case was filed in December 1998. On January 25, 1999, I dismissed the case pursuant to 28 U.S.C. § 1915A, finding that plaintiff Vincent Ammons had failed to state a claim upon which relief may be granted on his federal law claims. Also, I declined to exercise jurisdiction over plaintiff's state law claim.

On November 19, 1999, the Court of Appeals for the Seventh Circuit reversed the dismissal and remanded the case for consideration of plaintiff's claims. Those claims are: 1) that defendant Gary Burkum impermissibly interfered with plaintiff's fundamental right to marry under federal and state law; and 2) that defendant Marc Clements retaliated against plaintiff for exercising his constitutional right to formally grieve defendant Burkham's actions.

Defendants have filed a motion for summary judgment in which they contend that plaintiff should be barred from raising in this court his claim that he was denied his right to marry, because he raised that same claim in state court and received a judgment of dismissal on the ground that he had failed to exhaust his administrative remedies as required under state law. Defendants suggest that the state court's judgment should operate to bar plaintiff from bringing his claim in federal court. Alternatively, defendants contend that plaintiff's case should be dismissed because he has failed to exhaust his administrative remedies on both his claim that he was denied his right to marry and his retaliation claim as required by federal law under the 1996 Prison Litigation Reform Act and 42 U.S.C. § 1997e(a).

The question whether a prisoner has exhausted his administrative remedies on each of the claims he presents in his complaint in federal court is a threshold question that is ordinarily addressed before the complaint is served on the defendants. However, 42 U.S.C. § 1997e (c)(2) permits a district court to dismiss a prisoner's underlying claims without first requiring the exhaustion of administrative remedies if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. Because I found in my January 25, 1999 order that petitioner's claims failed to state a claim upon which relief can be granted, I did not consider at that time whether plaintiff had exhausted his administrative remedies on the

questions presented in his lawsuit. Through an oversight, the matter went unaddressed after the case was remanded to this court. Therefore, it must be resolved now, before any consideration is given to the legal merits of plaintiff's underlying claims.

Because the exhaustion question is a threshold one, it is unnecessary to consider it in the context of a motion for summary judgment. When petitioner filed his complaint in December 1998, he provided an affidavit and documentation to support his claim that he has exhausted his administrative remedies. The court will consider these materials to determine whether petitioner has exhausted his claims by utilizing the full inmate grievance procedure to complain about each of the claims he raised in this case. If plaintiff fails to make such a showing, his case in this court is ended. It will make no difference whether plaintiff's right to marry claim might also be barred because a state court has ruled that he failed to exhaust his administrative remedies before bringing that claim in state court. Conversely, if plaintiff makes a showing that he has exhausted his administrative remedies as required by federal law, then defendants may wish to reconsider whether to ask this court to bar plaintiff's claim on the ground that a state court earlier entered a contrary decision.

Accordingly, IT IS ORDERED that

1) Defendants' motion for summary judgment is STAYED pending a decision on the question whether plaintiff has exhausted his administrative remedies;

2) All discovery in this case is STAYED pending a decision on the question whether plaintiff has exhausted his administrative remedies, and the trial date and all other dates set forth in the magistrate judge's preliminary pretrial conference order of February 25, 2000 are RESCINDED;

3) Plaintiff's June 26, 2000, motion to stay this court's determination of the defendants' motion for summary judgment until his motion to compel discovery is decided (dkt. #41) is denied as unnecessary;

4) Defendants' first and second motions for judicial notice (dkt. #s 38 and 44) of documents from the Dane County Circuit Court case are denied as unnecessary;

5) Plaintiff's motion to compel discovery and for sanctions (dkt. #29) and his opposition to the defendants' motion for in camera review and protective order (dkt. #48) are denied without prejudice to his renewing the motions if the case survives the exhaustion determination;

6) Plaintiff's June 26, 2000 and July 5, 2000 motions for more time to respond to defendants' motions for in camera review and protective order (dkt. #42 and #46) are denied as moot; and

7) In the event the court determines that plaintiff has satisfied the exhaustion requirement and this case proceeds on the merits, a scheduling conference will be held for the purpose of reestablishing new dates for trial, disclosure of expert witnesses, and so forth. At

that time, either side may ask the court to reinstate any motions relating to discovery or summary judgment if the party believes such a course is warranted under the circumstances, and defendants may renew their objection to the June 27, 2000, order of the magistrate judge denying their motion for an in camera review of documents submitted in support of their motion for summary judgment.

The question whether plaintiff has exhausted his administrative remedies is taken under advisement.

Dated this 20th day of July, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge