

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

JOHN D. TIGGS, JR.; a.k.a. A'KINBO
JIHAD-SURU HASHIM,

Plaintiff,

v.

LINDA HODDY-TRIPP and
SECURITY CAPTAIN CALDWELL,

Defendants.

ORDER

01-C-171-C

In an order entered May 29, 2001, I allowed plaintiff to proceed on his claims that defendants Hoddy-Tripp and Caldwell used excessive force against him in violation of the Eighth Amendment and that defendant Hoddy-Tripp violated the First Amendment by refusing to mail certain letters written by plaintiff. I denied plaintiff leave to proceed in forma pauperis on all other claims in the complaint. Plaintiff has filed a motion that I construe as a motion for modification of the May 29, 2001 order to include a finding that the order is appealable under 28 U.S.C. § 1292. The motion will be denied.

A district court may authorize the appeal of an interlocutory order if "such order involves a controlling question of law as to which there is substantial ground for difference

of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation. . . ." 28 U.S.C. § 1292(b). See Ahrenholz v. Board of Trustees of the University of Illinois, 219 F.3d 674, 675 (7th Cir. 2000) ("There are four statutory criteria for the grant of a section 1292(b) petition to guide the district court: there must be a question of law, it must be controlling, it must be contestable, and its resolution must promise to speed up the litigation."). Because an immediate appeal from the denial of leave to proceed on certain claims in the May 29, 2001 order will not speed up the litigation, plaintiff's motion to modify the order to include a finding that the order is appealable under § 1292 will be denied.

One of plaintiff's arguments merits further mention. In the May 29, 2001 order, I noted,

To the extent that plaintiff is complaining more generally about conditions at Supermax not related to the level system, he is a class member in Jones v. Berge, 00-C-421-C (W.D. Wis.). Plaintiffs in that case have been allowed to proceed on a challenge to the constitutionality of conditions of confinement at Supermax.

Order, dkt. #2, at 35. Plaintiff contends that this conflicts with the class notice given in Jones, which states,

This suit seeks a judgment declaring that the alleged conditions at Supermax are unconstitutional and enjoining the defendant from engaging in the policies and practices that cause such conditions. This case does not prevent inmates from bringing separate lawsuits to present their claims for damages.

Jones, February 16, 2001 Order, dkt. #37, at 12. I can understand why plaintiff may think that this statement conflicts with the order denying him leave to proceed on his challenges to the conditions at Supermax. To clarify the point, plaintiff is not precluded from bringing a separate lawsuit for damages but he must wait until liability in the class action has been determined before he may do so. Because liability in the class action has not yet been determined, it was appropriate to deny plaintiff leave to proceed on his conditions of confinement claim.

ORDER

IT IS ORDERED that plaintiff's motion for modification of the May 29, 2001 order to include a finding that the order is appealable under 28 U.S.C. § 1292 is DENIED.

Entered this 2nd day of July, 2001.

BY THE COURT:

A black rectangular box containing a white handwritten signature in cursive script that reads "Barbara B. Crabb".

BARBARA B. CRABB
District Judge