

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

RODOSVALDO POZO,

Plaintiff,

ORDER

v.

02-C-12-C

BRAD HOMPE, CAPT. BLACKBOURN,
WARDEN GERALD BERGE,
SGT. HUIBRETSE and JON LITSCHER,

Defendants.

The parties in this case are presently briefing defendants' motion for summary judgment on plaintiff's claims that defendants subjected him to cruel and unusual conditions of confinement and violated his rights to free expression and free exercise of religion. In an order entered on December 4, 2002, the magistrate judge extended the time for plaintiff to oppose the motion to January 6, 2003.¹ He found credible plaintiff's representation that as of December 2, 2002, plaintiff had not received a copy of the motion and supporting papers

¹The typed date in the magistrate judge's order is actually October 7, 2002, the date the magistrate judge entered another order in this case dealing with plaintiff's discovery motions. It appears from the fact that the second "October 7" order was not mailed until December 4, 2002, that the date entry was a computer user error.

that defendants mailed to him on November 25, 2002.

Now plaintiff has submitted documents titled “Motion for Granting Summary Judgment (inter alia)” and “Motion for Summary Judgment.” Neither of these documents is actually a motion for summary judgment. Instead, I construe them together as a motion for an order requiring the institution to make photocopies of certain documents for plaintiff’s use in opposing defendants’ motion for summary judgment. The motion will be granted in part.

Attached to plaintiff’s motion are the following documents:

1) a copy of a letter plaintiff wrote to warden defendant Berge, asking Berge to approve his request for copies of the “professional exhibits from Atty. Fathi from ACLU, Dr. Kupers, the hygenist Feldt, among 3 exhibits in which proof that you [Berge] committed perjury. . .” so that he can oppose defendants’ motion for summary judgment;

2) a disbursement request form dated December 4, 2002, in which plaintiff asks for two photocopies of documents that are not identified on the form, to which prison officials responded on December 5, 2002, “Due to the volume of your request please forward more specific court orders that you need copies;”

3) a disbursement request form dated December 8, 2002, requesting photocopies of documents “for [plaintiff’s] brief” that plaintiff does not identify, to which prison officials responded on December 9, 2002, “Copies of court orders will not be approved. Please

demonstrate your extraordinary need;”

4) a disbursement request form dated December 10, 2002, requesting photocopies of “exhibits to oppose summary judgment,” to which prison officials responded on December 13, 2002, “You may refer to these documents in your brief. Copies denied;” and

5) a variety of disbursement request forms requesting photocopies in cases other than this one or copies of documents for this case that were approved for copying before defendants filed their motion for summary judgment.

In support of their motion for summary judgment, defendants have proposed 297 facts. It is ironic that plaintiff’s request for copies of documents to respond to these facts have been denied on the basis of their volume. Also, it is curious that prison officials would deny copies of “exhibits” and advise plaintiff that he can refer to them in his brief. This court does not consider any factual matter that is referred to in a brief that has not been submitted into evidence and brought to the court’s attention in the parties’ proposed facts. This does not mean that everything plaintiff has asked to be copied must necessarily be copied. Plaintiff can hand-copy any documents he wrote or typed himself. In addition, he should not submit as evidence copies of documents the defendants already filed in support of their motion for summary judgment or other documents such as court orders that are already a part of the court’s record.

Nevertheless, because it appears that prison officials are preventing plaintiff from

servicing and filing photocopies of evidentiary exhibits he needs to oppose defendants' motion for summary judgment, I will enter an order directing them to fill plaintiff's request for copies of any documents that plaintiff identifies as exhibits for this case in his response to defendants' proposed findings of fact, and I will extend one last time the deadline for plaintiff to oppose the motion.

For plaintiff's use in opposing defendants' motion for summary judgment, I am enclosing another copy of this court's summary judgment procedures and a "memorandum to pro se litigants regarding summary judgment motions." Plaintiff should read these documents closely and follow the court's procedures carefully. He will not be given another opportunity to oppose defendants' motion.

ORDER

IT IS ORDERED that the schedule for briefing defendants' motion for summary judgment is MODIFIED to allow plaintiff until January 27, 2003, in which to serve and file a brief, a response to defendants' proposed findings of fact and evidentiary materials in opposition to the motion for summary judgment. Defendants may have until February 7, 2003, in which to serve and file a reply.

Further, IT IS ORDERED that plaintiff's motion for an order requiring the institution to make photocopies of certain documents for plaintiff's use in opposing

defendants' motion for summary judgment is GRANTED in part and DENIED in part. The institution shall provide plaintiff with photocopies of any documents he identifies as exhibits for this case in his response to defendants' proposed findings of fact or in support of any additional facts he may propose. It need not copy any documents plaintiff wrote or typed himself that he can hand copy or that are already a part of the court's record in this case, including court orders.

Entered this 31st day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge