

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

JEFFREY FRIDAY, Officer 2 at Waupun
Correctional Institution; STEVEN HOUSER,
captain at Waupun Correctional Institution;
WILLIAM SCHULTZ, Financial Specialist 2
at Waupun Correctional Institution,

Defendants.

ORDER

02-C-459-C

Before the court is plaintiff Nathaniel Allen Lindell's motion to allow him to pursue compensatory damages against defendants Friday, Houser, and Schultz for his transfer from Waupun Correctional Institution to the Wisconsin Secure Program Facility. I assume that plaintiff is bringing this motion because I granted defendants' motion for summary judgment as to plaintiff's claim that defendants transferred him to the Wisconsin Secure Program Facility for retaliatory reasons. Although plaintiff does not have an independent claim for retaliatory transfer, if he can show that defendants retaliated against him for filing grievances and that the transfer would not have occurred had it not been for defendants' retaliation, he

may seek damages for his transfer.

Plaintiff argues that the “eggshell skull” rule permits him to seek damages from defendants for his transfer even though defendants did not have authority to decide his transfer. The “eggshell skull” rule has no applicability to this case. What plaintiff must prove is that he would not have had a record warranting his transfer to the Wisconsin Secure Program Facility had it not been for defendants’ unconstitutional retaliation against him.

Furthermore, to receive compensatory damages, plaintiff will have to show the extent of his injury caused by the transfer. He must offer specific evidence of the living conditions at the Wisconsin Secure Program Facility and how those conditions differ from the conditions he would have faced at Waupun Correctional Institution. Ustrak v. Fairman, 781 F.2d 573, 578 (7th Cir. 1986) (“The loss of amenities within prison is a recoverable item of damages, true, but it must be proved; it cannot be assumed; yet so far as the evidence of record in this case is concerned the difference in living conditions between the maximum and medium security sections of Pontiac is insignificant.”).

In any event, plaintiff's motion is unnecessary. The trial of this case will be bifurcated, with the liability phase to be tried first. If the jury returns a verdict in plaintiff's favor on the question of liability, he will be entitled to put in any evidence he has to prove his entitlement to more than nominal damages. Hence, I will deny plaintiff's motion as unnecessary.

ORDER

IT IS ORDERED that plaintiff Lindell's motion to pursue compensatory damages against defendants Friday, Houser and Schultz is DENIED as unnecessary.

Entered this 2nd day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge