

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

JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY, SGT. McCARTHY,
JAMES MUENCHOW, RENEE RONZANI,
SANDY HAUTAMAKI, JOHN RAY,
CYNTHIA O'DONNELL, and JAMYI WITCH,

Defendants.

ORDER

03-C-027-C

The Court of Appeals for the Seventh Circuit has vacated the grant of summary judgment in favor of the defendants on plaintiff's claim that between April 2002 and October 2002, defendants McCaughtry and Witch violated his First Amendment rights under the establishment clause when they refused to allow him to form an atheist group at the Waupun Correctional Institution. (The court of appeals upheld the grant of summary judgment in favor of defendants on the remainder of plaintiff's claims.) In remanding the case, the court noted that plaintiff is no longer confined at the Waupun Correctional Institution. Therefore, it has asked this court to address the question "which parties remain

as proper defendants and which should no longer be in the case because of Kaufman's transfer."

When I screened plaintiff's complaint, I found that plaintiff had stated an establishment clause claim against defendant Witch, a chaplain at the Waupun Correctional Institution, and Gary McCaughtry, the warden of the Waupun Correctional Institution. I denied plaintiff leave to proceed on his establishment clause claim against "the various inmate complaint examiners he has named as [defendants]" that had denied inmate complaints plaintiff filed on August 12, 2002 and August 27, 2002, because his allegations revealed that he filed these grievances well before the final decision was issued sometime after November 19, 2002, to deny his request to form an atheist group. On review, I am convinced that it was proper to deny plaintiff leave to proceed on his establishment clause claim against defendants Renee Rozani and James Muenchow, the only inmate complaint examiners plaintiff named as defendants in his complaint in connection with his establishment clause claim. The relevant allegations in plaintiff's complaint are that Rozani "returned" plaintiff's August 12, 2002 complaint to him on August 16, 2002, stating,

Ms. Tetzlaff was contacted and is waiting for information. She will respond as soon as she gets the information. At this point corresponding with appropriate staff is your best option.

In addition, plaintiff alleges that on September 14, 2002, defendant Rozani "rejected" plaintiff's August 27, 2002 complaint "as frivolous." Plaintiff does not allege what he said

in his August 27 complaint, but the rejection cannot implicate Rozani as having been involved personally in the alleged violation of plaintiff's constitutional rights because the decision had not yet been made to deny his request to form an atheist group.

With respect to defendant Muenchow, plaintiff alleges the following:

On October 13, 2002, plaintiff sent a request to an individual by the name of Aldrich, asking about the status of his request to form an atheist group. When Aldrich did not respond, plaintiff sent a second request to him on November 14, 2002. At that time, Aldrich responded,

That request has been forwarded to the warden with a recommendation that the content of the request does not meet the criteria as set in 309.

On November 20, 2002, plaintiff asked Aldrich for clarification. Aldrich responded that plaintiff was "to wait for the Warden's decision." Plaintiff then filed inmate complaint #WCI-2002-42256, which was received by the inmate complaint examiner on December 4, 2002. On December 5, 2002, defendant Muenchow rejected the complaint as "previously addressed." On December 12, 2002, plaintiff received a memo from an individual named Knick, in which Knick stated,

The recommendation to deny [the request to form an atheist group] was signed by the Warden on November 19, 2002, and sent to Madison. As of today, the institution has not received any word from Madison as to their decision.

Again, plaintiff does not say what he alleged in his December 4 complaint, but the rejection does not indicate that defendant Muenchow was involved personally in the alleged violation of his constitutional rights because the final decision had not yet been made to deny his request to form an atheist group. In any event, the rejection of an improperly filed

inmate complaint is not an act sufficient by itself to implicate an inmate complaint examiner in the denial of an inmate's constitutional rights.

As for plaintiff's establishment clause claim against defendants McCaughtry and Witch, I determined in the screening order that plaintiff had alleged sufficient facts to suggest that each was personally involved in denying his request to form an atheist group. However, the court of appeals has asked this court to determine whether these defendants should remain as parties to the suit "in light of plaintiff's transfer."

In his complaint, plaintiff requested declaratory, injunctive and monetary relief. Generally, a claim becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. Murphy v. Hunt, 455 U.S. 478, 481 (1982). Thus, where a plaintiff can show only past exposure to allegedly unconstitutional conditions, he has standing to seek monetary relief, but does not have standing to seek injunctive or declaratory relief. Olzinski v. Maciona, 714 F. Supp. 401, 411 (E.D. Wis. 1989)(citing Robinson v. City of Chicago, 868 F.2d 959, 966-67 (7th Cir. 1989)); see also Beck v. Lynaugh, 842 F.2d 759, 762 (5th Cir. 1988) (inmates could not seek injunctive relief when they were no longer confined in unit in which allegedly unconstitutional conditions existed). Courts recognize exceptions to the general rule in cases that are "capable of repetition, yet evading review." This exception is limited to those situations in which 1) the challenged action is too short in duration to be fully litigated prior to its cessation and

2) a reasonable expectation exists that the same parties would be subjected to the same action again. Murphy, 455 U.S. at 482.

In this case, there is no reason to believe that atheist inmates incarcerated at the Waupun Correctional Institution are there for such short periods of time that the first situation set out in Murphy applies. I see no reason to think that plaintiff will be returned to Waupun in the future. Plaintiff has been confined at the Jackson Correctional Institution since at least April 24, 2003, that is, for two and a half years. Although I can take judicial notice that the Wisconsin Department of Corrections has the authority to move inmates at will to promote the efficient and safe operation of the prison system, the mere possibility that plaintiff may be returned to Waupun at some time in the future is too speculative to meet the "reasonable expectation" threshold of Murphy. Therefore, I conclude that plaintiff's claims for declaratory and injunctive relief are moot. Plaintiff's claim for monetary relief against defendants McCaughtry and Witch is the only claim that remains viable.

The next question is what steps should be taken to move this case to resolution. In deciding defendants' motion for summary judgment, I did not engage in a full analysis of plaintiff's establishment clause claim because I concluded that atheism was not a religion capable of comparison with other religions. In light of the court of appeals' decision that atheism must be treated as a religion for the purpose of resolving the establishment clause claim, this court could reexamine the parties' submissions on summary judgment and render

a new opinion based upon those submissions. Alternatively, the parties may wish to file a new motion for summary judgment and submit new proposed findings of facts focused exclusively on the establishment clause claim or they may wish to proceed promptly to trial. To assist the parties in selecting a mutually agreed upon course, the magistrate judge will hold a telephone status conference to determine with the parties how best to move this case to final resolution.

ORDER

IT IS ORDERED that

1. Defendants Sgt. McCarthy, Sandy Hautamaki, John Ray and Cynthia O'Donnell are DISMISSED from this action on remand because plaintiff has not alleged that they participated in any way in the decision to deny him the ability to form an atheist group at the Waupun Correctional Institution.
2. Defendants James Muenchow and Renee Ronzani are DISMISSED for lack of personal involvement in the conduct at issue;
3. Plaintiff's claims for declaratory and injunctive relief against defendants Gary R. McCaughtry and Jamyi Witch are DISMISSED as moot.
4. The clerk of court is requested to schedule a status conference promptly before the

United States Magistrate Judge for the purpose of scheduling further proceedings in this action.

Entered this 28th day of October, 2005.

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