

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

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BERRELL FREEMAN,

Plaintiff,

ORDER

v.

03-C-0021-C

GERALD BERGE and  
JON E. LITSCHER,

Defendants.

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Two issues remain to be resolved in this case. The first is whether defendants subjected plaintiff to extreme cell temperatures in violation of his Eighth Amendment rights. The second is whether defendants denied plaintiff adequate food in violation of the Eighth Amendment. (In a recent communication regarding a discovery dispute, plaintiff expresses the belief that he also is litigating a claim that the food deprivation and excessive cell temperatures together deprived him of the basic human need for sensory stimulation and social interaction in violation of the Eighth Amendment. He is wrong. In an order dated June 3, 2003, I ruled that defendants are entitled to qualified immunity on plaintiff's claim that a combination of conditions of his confinement worked together to cause him sensory

deprivation and social isolation.)

On June 13, 2003, plaintiff filed a motion titled "Motion for Court Order/Intervention HELP!" In an order dated June 19, 2003, I construed this motion as a motion for an order directing prison officials to return plaintiff's legal papers relating to this case and I stayed a decision on the motion to allow defendants to advise the court of the disposition of plaintiff's legal papers. Defendants have submitted their response and the motion is once again before the court.

In his motion, plaintiff advised the court that for two weeks, he engaged in destructive behavior in his cell by smearing, smashing and spreading blood and feces on his cell walls. Subsequently, he was taken from his cell and placed in clinical observation status. When he was returned to his cell, all that remained of his property was a mattress, television, and reading glasses. Plaintiff's legal papers relating to this case were removed and have not been returned to plaintiff. According to defendants, plaintiff's legal property was destroyed because plaintiff contaminated it with his own blood and feces.

Plaintiff denies that his property was contaminated. On June 25, 2003, he submitted a document titled "Motion to Turn Over/Submit Evidence," in which he asks for an order requiring defendants to produce photographs he believes were taken of the damaged and contaminated cell so that he can show the court that his legal papers were unscathed by his rampage.

I conclude that at this point it makes no difference what the photographs would show. Defendants have represented that they have destroyed plaintiff's legal property because it was contaminated. I cannot order defendants to return plaintiff's property if it no longer exists. To avoid further delay in this lawsuit, I am enclosing to plaintiff with this order copies of (1) his complaint; (2) the magistrate judge's preliminary pretrial conference order dated April 23, 2003, with its attachments; and (3) a copy of this court's order of June 3, granting in part and denying in part defendants' motion to dismiss. Also enclosed is a copy of the docket sheet in the case. If plaintiff believes he needs any other document listed on the docket sheet beyond those enclosed with this order in order to prosecute his two remaining claims, he will have to identify them for the court and pay for them at the rate of \$.10 a page.

#### ORDER

IT IS ORDERED that

1) Plaintiff's motion for an order directing prison officials to return plaintiff's legal papers relating to this case is DENIED. A copy of the papers in the court's record that the court deems necessary for plaintiff to prosecute the two claims remaining in this lawsuit are enclosed to plaintiff with this order. If plaintiff wants additional portions of the record, he

will have to identify on the enclosed docket sheet the documents he wants and pay for them at the rate of \$.10 a page.

Entered this 30th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge