

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

JOEL FLAKES,

Plaintiff,

v.

MATTHEW FRANK, CORRECTIONS
CORPORATION OF AMERICA, JANE
SONDALLE,

Defendants.

ORDER

04-C-189-C

When petitioner began this lawsuit, he named eleven defendants and alleged facts from which I could identify at least eleven separate claims, some with subparts. In an order dated April 30, 2004, I denied plaintiff leave to proceed on some of his claims, including claims he had raised under the Americans with Disabilities Act, and dismissed seven defendants. Subsequently, on May 20, 2004, I reinstated one of plaintiff's claims and one defendant. On June 17, 2004, I granted plaintiff's motion to reconsider the dismissal of his claims under the Americans with Disabilities Act, concluding that new Supreme Court precedent permitted those claims to go forward. Over the next several months, plaintiff filed requests for production of documents, additional motions for reconsideration, a motion to

reinstate a defendant, a motion for a preliminary injunction, a motion to amend his complaint and an amended complaint adding two new defendants and dismissing one defendant. On March 10, 2005, defendants moved to dismiss several of plaintiff's claims for his failure to exhaust his administrative remedies. In an order dated May 26, 2005, I granted defendants' motion. Among the matters dismissed were plaintiff's claims that a) defendant Lawrence Daken retaliated against him for exercising his First Amendment right to file a grievance by refusing to retrieve a shower chair for him; b) defendant Peggy Meyers retaliated against him for exercising his First Amendment right to file a grievance by denying him job opportunities; and c) defendant Cynthia Neuhauser deliberately refused to arrange for plaintiff to have hip surgery despite his treating physician's approval of the surgery. Although I did not make it explicit in the May 26 order, the dismissal of these claims ended plaintiff's lawsuit against defendants Daken, Meyer and Neuhauser. These defendants should have been dismissed from the suit and their names should no longer appear in the caption of the court's orders or the parties' submissions. In a separate order, I am amending the May 26 order to make it explicit that defendants Daken, Meyer and Neuhauser are no longer parties to this suit.

Only four claims remain to be resolved in this suit: (1) defendant Corrections Corporation of America's policies deprived plaintiff of a cane, double mattresses, a chair and hip replacement surgery in violation of his Eighth Amendment rights; (2) defendant Jane

Sondalle retaliated against plaintiff for exercising his First Amendment right to file a grievance by directing staff to harass him; (3) defendant Jane Sondalle retaliated against plaintiff for exercising his First Amendment right to file a grievance by refusing him assistance in moving about the prison; and (4) defendant Frank violated plaintiff's rights under the Americans with Disabilities Act of 1990 by failing to arrange for plaintiff to receive the services of an aide while he was confined at the Oshkosh Correctional Institution.

Now plaintiff has filed a "Notice of Motion and Motion for Order to Allow Plaintiff to Use Release Savings and Release Account Pursuant to F.R.C.P., Rule #7(b)(1)." In support of this motion, plaintiff contends that prison officials have denied him a legal loan extension to cover the costs of prosecuting this lawsuit and defending against defendants' motion for summary judgment. Plaintiff says he has about \$238.54 in his release account but that prison officials will not let him use this money to pay costs in connection with this lawsuit unless he first obtains a court order authorizing disbursements from the account. Attached to plaintiff's motion is a copy of a memorandum to plaintiff from Shawn Dolan, a financial programs supervisor, who advises plaintiff that she is denying plaintiff's request for a legal loan extension "at this time." From the memorandum, it appears that the loan extension was denied because plaintiff has declined to supply prison officials with the information it needs to determine whether a legal loan extension is appropriate for the purpose to which plaintiff intends to put it.

I construe plaintiff's motion as a motion for a preliminary injunction to enjoin defendants from interfering with his ability to prosecute this lawsuit. The motion will be denied. First, plaintiff has made no showing that if he were to supply the institution with the information it needs to assess his request for a legal loan extension the request would be denied.

Second, although plaintiff is correct that the Wisconsin Court of Appeals has interpreted the statutory language of Wisconsin's Prison Litigation Reform Act to authorize prison officials to disburse funds from a prisoner's release account to pay state court filing fees, the particular statutory language examined by the court of appeals does not exist in the federal version of the Prison Litigation Reform Act. Moreover, the decisions plaintiff cites, Coleman v. Sullivan, 229 Wis. 2d 804 (Ct. App. 1999) and Spence v. Cooke, 222 Wis. 2d 530 (Ct. App. 1998), hold that release account funds may be used to pay for *filing fees*, not postage and copying costs.

Finally, in Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003), the Court of Appeals for the Seventh Circuit made it clear that prisoners have no constitutional entitlement to a subsidy to prosecute their lawsuits. Plaintiff Cole might have anticipated that it would not be cheap to litigate a lawsuit asserting claims against numerous defendants. Like any other litigant, a prisoner must decide which of his legal actions is important enough to fund given his resources. If plaintiff failed to anticipate that it would cost him more than

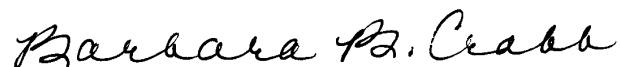
the state is willing to lend him to prosecute a lawsuit with the breadth and scope of the one he filed, that is a problem he must handle on his own. It is not the state's obligation to grant his request for a legal loan extension or allow him to deplete his release account to pay his litigation costs.

ORDER

IT IS ORDERED that plaintiff's "Notice of Motion and Motion for Order to Allow Plaintiff to Use Release Savings and Release Account Pursuant to F.R.C.P., Rule #7(b)(1)" is construed as a motion for a preliminary injunction and is DENIED.

Entered this 29th day of June, 2005.

BY THE COURT:



BARBARA B. CRABB
District Judge