

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

JOEL FLAKES,

Plaintiff,

v.

MATTHEW J. FRANK,
CORRECTIONS CORPORATION OF AMERICA,
JANE SONDALLE and
DANIEL BENIK,

Defendants.

ORDER

04-C-189-C

Plaintiff is proceeding in this action on the following claims:

1) defendant Corrections Corporation of America's policy of denying him a cane, double mattresses and a chair and its refusal to arrange for hip replacement surgery deprived plaintiff 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 plaintiff and refuse him assistance in moving about the prison and by arranging for him to have to go to the Health Services unit to shower;

3) defendant Sondalle discriminated against plaintiff because of his race by not assigning him an aide after his arrival at Stanley Correctional Institution;

4) defendant Sgt. Daken retaliated against plaintiff for exercising his First Amendment right to file a grievance by refusing to retrieve a shower chair for plaintiff;

5) unknown Stanley Correctional Institution employees retaliated against plaintiff for exercising his First Amendment right to file grievances by denying him job opportunities (plaintiff is proceeding against defendant Benik for the sole purpose of conducting discovery to learn the names of the individuals personally involved in these alleged retaliatory acts);

6) an unknown employee at the Columbia Correctional Institution deliberately refused to arrange for plaintiff to have hip surgery despite Dr. Daley's approval of the surgery (plaintiff is proceeding against defendant Frank for the purpose of discovering who this individual is); and

7) defendant Frank violated plaintiff's rights under the Americans with Disabilities Act of 1990 by a) allowing him to be confined to a handicap cell at the Stanley Correctional Institution that lacked the amenities of a regular cell; b) failing to arrange for recreational activities and programming for handicapped individuals; and c) 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 motion for a preliminary injunction. In his motion, plaintiff

states that the handicap cell in which he is presently held has cracks in the walls which let in freezing cold air and rain water. These conditions exacerbate his osteoarthritis pain. In addition, plaintiff states that “prison authorities” are illegally opening his legal mail “as it pertains to this case.” He contends that two letters from the Dane County Clerk of Court’s office, two letters from defendant Corrections Corporation of America’s lawyers and a letter from this court have been opened and read by “defendant prison authorities.” As relief for these recent developments, plaintiff seeks an order enjoining the defendants from opening and reading his legal mail and keeping in a damp and cold cell.

This court requires a party seeking emergency injunctive relief to follow specific procedures for obtaining such relief. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff did not comply with these procedures. However, in this instance, his failure to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition is not fatal to his motion. Instead, the motion must be denied because neither of the circumstances giving rise to plaintiff’s motion relate directly to the issues raised in this complaint. Specifically, plaintiff has not been granted leave to proceed in forma pauperis on a claim that the physical conditions of his cell violate his right to be free of cruel and unusual punishment under the Eighth Amendment or that his right of access to the courts is being chilled by the opening

of his legal mail. If plaintiff wishes to raise these claims, he will have to do so in a separate lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for a preliminary injunction is DENIED because the matters raised in the motion are not properly raised in the context of this lawsuit.

Entered this 13th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge