

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

TITUS HENDERSON,

Plaintiff,

v.

GERALD BERGE and
MATTHEW FRANK,

Defendants.

ORDER

04-C-39-C

Plaintiff Titus Henderson has filed a motion for reconsideration of this court's order of March 31, 2005, in which I granted defendant Gerald Berge and Matthew Frank's motion for summary judgment as to plaintiff's claim that they had violated the establishment clause of the First Amendment by forcing him to watch the Judeo-Christian oriented Sky Angel Trinity television channel. The undisputed facts revealed that the Sky Angel television station came free with the purchase of basic cable. For the most part, plaintiff's motion for reconsideration is nothing more than reargument of matters I have already decided.

Plaintiff's first argument is that the "Secretary" refused to send plaintiff documents he had attached to his complaint to show administrative exhaustion that he needed to prove

“the mandatory completion of the Level 5 Behavioral Program with Christian Way Study.”

First, the fact that plaintiff failed to make copies of these documents before mailing them is not the Secretary’s fault. Furthermore, I have examined the exhaustion documents plaintiff attached to his complaint and determined that none of them would have helped plaintiff succeed on his claim. The documents show that plaintiff filed inmate complaints about the existence of the Sky Angel network and that the complaint examiners denied these complaints, advising plaintiff to change the channel on his television or simply turn it off if he did not want to watch. In no way do these documents begin to prove that plaintiff was forced to engage in any Christian programming.

Plaintiff’s second argument is that the court erred in considering the evidence defendants submitted about how he had been demoted three times for bad behavior; he complains that this information was false and prejudicial. As for plaintiff’s contention that the information was false, the appropriate time for him to have put defendants’ evidence into dispute was in his response to their proposed findings of fact. In regard to his assertion that the information was simply prejudicial, plaintiff claimed that he was unable to progress through the level system because he would not participate in Christian programming. Evidence showing that the real reason he was denied promotions was for unacceptable behavior is certainly relevant.

Plaintiff’s argument Nos. 3-7 are premised on his erroneous belief that the

establishment clause requires prison officials to take affirmative steps to insure that inmates of all faiths receive identical treatment. State governments may grant access to its facilities to individuals who wish to express their religious views without running afoul of the establishment clause so long as they do so on a religion-neutral basis. See, e.g., Rosenberger v. Rector and Visitors of the University of Virginia., 515 U.S. 819, 842 (1995) (“It does not violate the Establishment Clause for a public university to grant access to its facilities on a religion-neutral basis to a wide spectrum of student groups, including groups that use meeting rooms for sectarian activities, accompanied by some devotional exercises.”). There was no evidence that defendants were offered and declined a free television station oriented toward any other religion. Plaintiff is entitled to his beliefs, but his misunderstandings about what the Constitution requires are not the governing law of this case.

Because plaintiff’s arguments fail to persuade me that I erred in ruling as I did, the motion will be denied. However, I am compelled to raise one final note largely because plaintiff has two other pending cases in this court. Plaintiff’s arguments suggest that he is under the impression that once he has stated a claim, it is defendants’ burden to disprove his allegations beyond all doubt. To the contrary, it is plaintiff’s burden to prove the truth of the allegations he makes. Plaintiff should also be aware that making allegations he has no reason to believe he will be able prove is sanctionable. Fed. R. Civ. P. 11.

ORDER

IT IS ORDERED that plaintiff Titus Henderson's motion for reconsideration is DENIED.

Entered this 26th day of May, 2005.

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