

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

DATHAN BEAN,

Plaintiff,

v.

SANDRA HAUTAMAKI, JEFFREY P.
ENDICOTT and KELLY MUESKE,

Defendants.

ORDER

04-C-447-C

Plaintiff is proceeding in this lawsuit on his claim for money damages arising out of defendants' alleged violation of his Eighth Amendment rights. Specifically, plaintiff alleges that defendants intentionally failed to protect him from physical harm by double-celling him with Oskar McMillian on April 21, 2004. Plaintiff and McMillian have been moved into separate cells. Indeed, the two are now housed in different institutions. Therefore, any claim plaintiff had for injunctive or declaratory relief is moot.

In an order entered in this case on May 31, 2005, I ordered that no later than June 30, 2005, plaintiff was to provide the court with his prima facie showing of physical injury that would require a trial. Plaintiff has not responded to that order. Instead, on

July 12, 2005, he submitted two pages of a letter that ends midsentence, is not signed, and does not show that a copy was sent to John Glinski, counsel for defendants. In the letter, plaintiff appears to be complaining that inmate McMillian attempted to prepare and mail to him what he (plaintiff) intended to submit as his response to the May 31 order, but that McMillian's papers were seized and have not been given to plaintiff. The papers consisted of an affidavit McMillian prepared for plaintiff's signature, McMillian's own affidavit with 10 exhibits, and an objection to the requirement that he prove a physical injury to be entitled to money damages.

Because plaintiff's letter, such as it is, does not appear to have been served on opposing counsel, I am enclosing a copy to him with a copy of this order. However, I am unwilling to accept plaintiff's contention that prison officials are physically preventing him from prosecuting this lawsuit because they will not give him the legal papers inmate McMillian prepared. What physical injury plaintiff suffered as a result of his assignment to share a cell with inmate McMillian is uniquely within plaintiff's own personal knowledge. He does not need McMillian to corroborate it. Plaintiff appears able to read and write, as is evidenced by his July 12 letter. He is in no position to argue that prison officials are interfering with his right of access to the courts simply because they have interrupted McMillian's attempts to draft plaintiff's affidavit in this case.

Although I suspect from the fact that McMillian has attempted to prepare an

objection to the requirement that plaintiff show a physical injury that plaintiff may not be able to produce evidence of a physical injury resulting from his having shared a cell with inmate McMillian, I will give him one more opportunity to make the required showing.

ORDER

IT IS ORDERED that plaintiff may have an extension of time to July 29, 2005, in which to submit to the court all of his evidence establishing that he actually suffered a compensable injury. Plaintiff's own affidavit explaining his injury will suffice, so long as it accompanied by medical documents and all other reports that establish he suffered an actual physical injury at McMillian's hands. If, by July 29, 2005, plaintiff fails to make a showing that he suffered a physical injury, I will dismiss this case on the court's own motion for plaintiff's failure to state a claim upon which relief may be granted under the Eighth Amendment.

Entered this 18th day of July, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge