

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

GARY A. BORZYCH,

Plaintiff,

v.

MATTHEW J. FRANK, STEVE
CASPERSON, ANA M. BOATWRIGHT,
GERALD BERGE, GARY BOUGHTON,
PETER HUIBREGTSE, RICHARD
RAEMISCH, SGT. JUDITH HUIBREGTSE,
CPT. LEBBEUS BROWN, ELLEN RAY and
TODD OVERBO,

Defendants.

ORDER

04-C-632-C

In an order dated October 14, 2004, I granted plaintiff leave to proceed under 28 U.S.C. § 1915A on nine claims he brought under 42 U.S.C. § 1983. In addition, I denied him leave to proceed on five other claims and dismissed five respondents. Plaintiff now seeks reconsideration of parts of that order, advancing four arguments: (1) the court erred in concluding that one of his free exercise claims was barred in part under the doctrine of claim preclusion; (2) the court misconstrued his claim regarding denial of a religious catalogue; (3) the court's conclusion that inmate complaint examiners are entitled to absolute immunity for their recommendations and decisions is absurd; and (4) the court should not have denied plaintiff leave to proceed on his conspiracy claim because only two

of the four alleged conspirators were dismissed as absolutely immune. Plaintiff's motion will be denied.

In his complaint, plaintiff claimed that he received a letter that was sent on May 29, 2003, in which he was told that his copies of "Tower of Wotan" and "Creed of Iron," books plaintiff claimed he needed in order to practice his Odinist faith, would be destroyed if he did not send them out of the institution. Because plaintiff had already brought this claim against defendants Frank and Berge in an earlier case that was dismissed with prejudice, I concluded that plaintiff was barred under the doctrine of claim preclusion from pursuing this claim against these defendants again. However, I allowed plaintiff to proceed against other defendants who had not been involved in the earlier suit. Plaintiff argues that my conclusion that his claim was partly barred was in error. According to plaintiff, his challenge in this case is to the state-wide blanket ban on the two texts which he did not know existed when he brought his previous suit. Because the May 29 denial was made pursuant to an official policy, plaintiff's earlier claim amounted to an attack on the blanket-ban. That plaintiff apparently did not learn this through discovery in his former case is of no consequence.

Next, plaintiff argues that I misconstrued his claim regarding a denial of "Azure Green," a religious catalogue depicting Odinist products. According to plaintiff, the court was wrong to deny him leave to proceed on a claim that the denial of this catalogue infringed on his free exercise rights because his claim was based on his right to free speech. Pursuant to the duty to read pro se complaints liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), I construed plaintiff's allegation that he was denied a religious publication to possibly

implicate free exercise rights. However, I denied plaintiff leave to proceed on such a claim because he had not alleged that he needed the catalogue to exercise his religion. With respect to plaintiff's contention that he lost a free exercise claim as a result, plaintiff should direct his attention to pages 26-27 where I made clear that he would be allowed to proceed on his claim that the denial of Odinist materials violated his free speech rights.

Third, plaintiff argues that I erred in granting government officials absolute immunity for making recommendations or decisions about inmate complaints. According to plaintiff, the decision is absurd and effectively grants complaint examiners free rein to dispose of inmate complaints with no real oversight. Plaintiff's argument is premised on the erroneous assumption that suing complaint examiners in a civil action is an appropriate means of collaterally attacking their decisions. So it is clear to plaintiff, even if I had not concluded that officials are entitled to immunity for ruling on inmate complaints, this court has no authority to review the wisdom or correctness of complaint examiner decisions or recommendations. Plaintiff has not explained any flaw in the reasoning I provided for granting immunity; his sole argument is that he will not be able to use § 1983 for an improper purpose.

Finally, plaintiff argues that the court erred in denying him leave to proceed on his conspiracy claim. In his complaint, plaintiff alleged that defendants Raemisch, Ellen Ray, Peter Huibregtse and John Ray conspired for the purpose of insuring that he would be unable to practice Odinism and in furtherance of this objective, each recommended the dismissal or rejection of plaintiff's inmate complaints, WSPF-2004-3117, WSPF-2004,

11310, WSPF-2004-11312, WSPF-2004-12351, WSPF-2004-13666, WSPF-2004-14393 and WSPF-2004-17288. Plaintiff contends that because I dismissed only defendants Ellen and John Ray on the ground that they were entitled to immunity, his conspiracy claim should survive against defendants Raemisch and Peter Huibregtse because they were not dismissed. Plaintiff misunderstands the nature of the quasi-judicial immunity. The doctrine does not protect those who make decisions or recommendations about inmate complaints from all constitutional claims. Instead, it protects all government officials from being held liable for the recommendations and decisions they make. In short, quasi-judicial immunity protects actions and not individuals. I allowed plaintiff to proceed against defendants Raemisch and Peter Huibregtse because he alleged claims for which they could be held liable for actions they had allegedly taken other than making recommendations or decisions about inmate complaints. However, plaintiff's conspiracy claim is based exclusively on each defendant's participation in dismissing inmate complaints. Accordingly, it was appropriate to deny leave to proceed as to that claim.

IT IS ORDERED that plaintiff Garry Borzych's motion to reconsider the order dated October 14, 2004 is DENIED.

Entered this 28th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge