

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

FRANK RATCLIFF,

Plaintiff,

v.

MEMORANDUM AND ORDER
04-C-902-S

GERALD BERGE, THOMAS BORGEN,
TOM GOZINSKI, SANDRA HAUTAMAKI
and RICHARD RAEMISCH,

Defendants.

Plaintiff Frank Ratcliff commenced this civil action under 42 U.S.C. § 1983 claiming that defendants Gerald Berge, Thomas Borgen, Tom Gozinski, Sandra Hautamaki and Richard Raemisch violated his First Amendment and Fourteenth Amendment due process rights. In his complaint he alleges that they removed Peggy Swan from his visitor list.

On February 4, 2005 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. On March 14, 2005 plaintiff's request to voluntarily dismiss this case was granted.

On June 1, 2005 the above entitled matter was reopened based on the submission by plaintiff of his brief in opposition to defendants' motion for summary judgment. Defendants filed a reply to their motion on June 13, 2005.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding the defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Frank Ratcliff is currently an inmate at the Fox Lake Correctional Institution, Fox Lake, Wisconsin (FLCI). Defendant Gerald Berge was the warden at the Wisconsin Secure Program Facility, Boscobel, Wisconsin (WSPF). Defendant Thomas Borgen is the warden at FLCI. Defendant Tom Gozinske is the Institution Complaint examiner at FLCI. Defendant Sandra Hautamaki is the Correction Complaint Examiner and defendant Richard Raemisch is the Assistant Secretary of the Wisconsin Department of Corrections.

Gary Boughton is the Security Director at WSPF. Peggy Swan has violated institution policies and procedures at WSPF on at least six occasions. On August 21, 2002 Boughton wrote Swan and informed her that he was suspending her visiting privileges at the WSPF and with inmate Conquest for a period of six months.

On January 14, 2003 Boughton suspended Swan's mail privileges with inmate Freeman for a period of six months and informed her that this was the second occurrence in which her involvement with an inmate at the WSPF had been detrimental.

On June 10, 2004 Warden Berge wrote Swan and informed her that he had information that she was assisting inmates Collins and Bounds in transferring personal property. He suspended Swan's mail and visiting privileges within the Department of Corrections for a period of one year. Plaintiff was informed that Swan had been removed from his visitor list in June 2004.

On July 4, 2004 Swan appealed Berge's decision to the Secretary of the Department of Corrections. On July 14, 2004 Boughton advised Swan that she had violated the suspension of mail privileges by corresponding with a WSPF inmate. He advised her that he was extending the suspension of her mail privileges within the Department of Corrections for one year effective July 10, 2004.

MEMORANDUM

Plaintiff claims that the defendants violated his First Amendment rights by removing Peggy Swan from his visitor list. Defendants moved for summary judgment on this claim.

An inmate's First Amendment right may be restricted by regulations which are reasonably related to legitimate penological objectives. Turner v. Safely, 482 U.S. 78 (1987). There is a valid, rational connection between Swan's removal from plaintiff's visitor list and prison safety. Swan had breached prison rules on numerous occasions and her presence in the institution is detrimental to prison security. Plaintiff's First Amendment rights were not violated by the removal of Swan from his visitor list.

Defendants are entitled to judgment in their favor as a matter of law. Their motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must

be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that the defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all federal law claims contained therein with prejudice.

Entered this 14th day of June, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge