

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

WAYNE L. BREWER,

Plaintiff,

v.

MEMORANDUM AND ORDER
04-C-957-S

ELLEN K. RAY,

Defendant.

Plaintiff Wayne Brewer was allowed to proceed on his First and Fourteenth Amendment claims against defendant Ellen K. Ray. In his complaint he alleges that defendant Ray interfered with his ability to file inmate grievances and denied him the ability to litigate a prior case in this court.

On June 3, 2005 defendant 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. Plaintiff cross-moved for summary judgment on June 16, 2005. These motions have been fully briefed and are ready for decision.

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 motions for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Wayne L. Brewer is an inmate at the Wisconsin Secure Program Facility (WSPF), Boscobel, Wisconsin. Defendant Ellen K. Ray is the Institution Complaint Examiner at WSPF.

Plaintiff filed an institution complaint (# CCI-2001-37843) on December 20, 2001 complaining about statements in his administrative confinement hearing. It was rejected because it was

not within the scope of the grievance procedure. On appeal this decision was affirmed.

On May 15, 2002 plaintiff filed institution complaint (#SMCI-2002-17300) alleging that his May 4, 2002 complaint was distorted and misrepresented. This complaint was rejected because it had been previously addressed. This decision was affirmed on appeal.

Plaintiff had filed an institution complaint (SMCI-2002-15527) on April 30, 2002 complaining that he had been given a dirty mattress. Defendant dismissed this complaint as moot because plaintiff had been moved to another cell. Although plaintiff did not appeal this dismissal on May 13, 2002 he filed a complaint (SMCI-2002-16726) concerning challenging the rejection of his complaint. Defendant dismissed this complaint as untimely and moot. Plaintiff did not appeal this decision.

On August 14, 2002 plaintiff filed a case in this Court, Case No. 02-C-458-S. It was dismissed without prejudice on November 25, 2002 for plaintiff's failure to exhaust his administrative remedies on his claims that false and misleading information led to his institution placement and that his inmate complaints were arbitrarily dismissed. Plaintiff had not shown that he had filed inmate complaints on these claims. On December 30, 2002 this Court granted plaintiff an extension of time to file an appeal but he never appealed.

On December 30, 2002 plaintiff filed an institution complaint (WSPF-2002-45135) concerning wanting legal cases sent to his cell due to his eye injury. This complaint was subsequently dismissed because plaintiff's concerns were addressed in (WSPF-2003-771).

On January 4, 2003 plaintiff submitted an institution grievance (WSPF-2003-771) alleging he was being denied access to the court because of an eye condition. This complaint was returned to the institution for priority investigation. On February 3, 2002 plaintiff was seen by Dr. Steffen at the UW clinic. He was diagnosed with uveitis but was advised he could still use the computer. Accordingly, defendant rejected his complaint of denial of access to the courts. This decision was affirmed on appeal.

MEMORANDUM

Plaintiff claims that the defendants violated his First Amendment and Fourteenth Amendment rights to petition the government for redress of his grievances. Defendant moves for summary judgment on these claims.

To prevail on his Fourteenth Amendment due process claim plaintiff must show that he was deprived of a liberty interest. Courts have held that inmates do not have a liberty interest in obtaining relief from the inmate complaint examiner. See Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002); Averhart v. Tutsie. 618 F.2d 479, 480 (8th Cir. 1980. Since the inmate grievance procedure

did not create a liberty interest for plaintiff his Fourteenth Amendment rights were not violated by the defendant's actions pursuant to the procedure. Accordingly, defendant Ray is entitled to judgment in her favor on plaintiff's Fourteenth Amendment claim. See Williams v. Lane, 851 F.2d 867, 879 (7th Cir. 1988).

Plaintiff argues that his First Amendment right to petition the government was violated by defendant Ray's handling of his inmate grievances. He was, however, allowed to file numerous inmate complaints as well as civil actions in this court. The First Amendment allows him to petition the government for redress but does not guarantee a certain result. In Antonelli v. Sheahan, 81 F. 3d 1422, 1420-31 (7th Cir. 1996), the Court held that an inmate's filing of court actions indicates that the institution has not infringed his First Amendment right to petition the government for a redress of his grievances. Defendant Ray did not deny plaintiff his First Amendment right to petition the government for redress of grievances.

Plaintiff specifically alleges that defendant Ray obstructed his access to the court in Case No. 02-C-458-S. Inmates have a constitutional right to meaningful access to the courts through adequate law libraries or adequate assistance from persons trained in the law. Bounds v. Smith, 420 U.S. 817, 828 (1977). In order to prevail on a claim of denial of access to the courts plaintiff

must demonstrate that he was injured by the denial of access. Lewis v. Casey, 518 U.S. 343, 351 (1996).

On August 14, 2002 plaintiff filed Case No. 02-C-458-S in this court. It was dismissed without prejudice on November 25, 2002 for plaintiff's failure to exhaust his administrative remedies on his claims that false and misleading information led to his institution placement and that his inmate complaints were arbitrarily dismissed. Plaintiff had not shown that he exhausted his administrative remedies on these claims. On December 30, 2002 this Court granted plaintiff an extension of time to file an appeal but he never appealed.

Plaintiff filed inmate grievances on December 30, 2002 and January 4, 2003 alleging he was being denied access to the court because of an eye condition. Plaintiff argues that defendant Ray's handling of these complaints affected his access to the courts in Case No. 02-C-458. He cannot, however, show any prejudice to Case No. 02-C-458 because it had been dismissed prior to any action taken by defendant Ray. Defendant Ray did not violate plaintiff's First Amendment right of access to the courts.

Defendant Ray is entitled to judgment in her favor on plaintiff's claims. Her motion for summary judgment will be granted and plaintiff's motion for summary judgment will be denied.

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 defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is DENIED.

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

Entered this 29th day of June, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge