

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

CINDY O'DONNELL, SANDRA
HAUTAMAKI, JOHN RAY,
PETER HUIBREGTSE, GERALD BERGE,
SGT. S. GRONDIN, C.O. D. ESSER,
KELLY TRUMM, C.O. JOHNSON,

Defendants.

ORDER

05-C-04-C

This case is scheduled for jury trial on February 27, 2006, on plaintiff's claims that his First Amendment rights have been violated by the decision of defendants Haines, Berge, Trumm, Huibregtse, Hautamaki and O'Donnell to enforce prison policies prohibiting prisoners from possessing magazines with torn covers and that his Eighth Amendment rights were violated when defendant Esser used excessive force against him. Now before the court is plaintiff's motion "to have unresolved motions decided." Specifically, plaintiff asks the court to rule on four motions he believes are unresolved and which he identifies as docket numbers 13, 68, 69 and 70 (a motion to compel discovery, motion for appointment of

counsel, motion for separate trials and motion for a writ of habeas corpus ad testificandum). In addition, he refers to docket #80, which he contends was both a response to defendant's motion for reconsideration and an independent motion for reconsideration.

First, in an order dated November 10, 2005, I ruled on plaintiff's motion for appointment of counsel, motion for separate trials and motion for a writ of habeas corpus ad testificandum. Therefore, I will deny his motion for resolution with respect to those motions. A copy of the November 10 order is enclosed to plaintiff with a copy of this order.

Second, although plaintiff contends that docket #80 contained a motion for reconsideration, he is mistaken. In that filing, captioned as "plaintiff's response to defendant's motion for clarification," plaintiff acknowledged that the court had confounded two of his claims. His only assertion was that defendants had erred in their motion when they listed the defendants appropriate to his First Amendment claim. In an order dated October 31, 2005, I granted defendants' motion in part, retaining defendants Haines, Berge, Trumm, Huibregtse, Hautamaki and O'Donnell as parties to the lawsuit. Plaintiff's response raised no additional questions that required reconsideration.

Finally, through an inadvertent oversight, the court has not ruled on plaintiff's motion to compel discovery, filed June 20, 2005. In his present motion, plaintiff contends that the court's failure to rule on his discovery motion prejudiced him on summary judgment by preventing him from offering proof that defendants Boughton and Berge were proper

defendants to his excessive force claim. To the extent that plaintiff is asking the court to reconsider its summary judgment decision, his motion is denied.

Defendants filed their motion for summary judgment on June 24, 2004, four days after plaintiff filed his motion to compel. Although the court did not rule on the motion immediately, plaintiff did not assert that his ability to file a response to the summary judgment motion was in any way handicapped by the lack of discovery. When plaintiff filed a motion to extend the deadline for the submission of his response brief on July 13, 2005, he made no mention of the discovery motion. He did not contend at that time or at any time thereafter that his inability to obtain discovery prevented him from submitting necessary evidence in response to defendant's motion for summary judgment. The summary judgment order was issued on October 21, 2005. At this late date, the court will not re-examine the summary judgment decision.

Although most of plaintiff's discovery requests are no longer relevant in light of the order on summary judgment, one of the demands listed in his discovery motion remains pertinent: his request for defendant Esser's personnel file. Defendants refused to provide this information to plaintiff, contending that the information contained in defendant Esser's personnel files is irrelevant to this lawsuit and unlikely to lead to admissible evidence.

Although defendants may have legitimate objections, they cannot completely block discovery of relevant documents that might be contained in defendant Esser's personnel file.

It is at least possible that certain types of past complaints against defendant Esser could be discoverable in this case and perhaps even admissible at trial. Therefore, I will require the defendants to submit a copy of defendant Esser's personnel file to Magistrate Judge Crocker for in camera review. What happens next depends on what he finds. I will give defendants two weeks to provide any materials responsive to this order.

ORDER

IT IS ORDERED that plaintiff's motion to compel discovery is STAYED with respect to his request for a copy of defendant Dane Esser's personnel file and DENIED with respect to all other requests. Not later than December 27, 2005, defendants shall submit a copy of defendant Esser's personnel file to the court ex parte for in camera review.

FURTHER, IT IS ORDERED that plaintiff's motion "to have unresolved motions decided" is GRANTED with respect to docket number 13 and DENIED with respect to

docket numbers 68, 69, 70 and 80.

Entered this 9th day of December, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge