

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

---

RAYNELL D. MORGAN,  
Plaintiff,

v.

MEMORANDUM and ORDER  
05-C-098-S

GERALD A. BERGE, GARY BOUGHTON,  
LEBBEDUS BROWN and JOHN GRONDIN,

Defendants.

---

On March 1, 2005 plaintiff Raynell D. Morgan was allowed to proceed on his claim that defendants Gerald A. Berge, Gary Boughton, Lebbodus Brown and John Grondin denied him access to the courts. In his complaint plaintiff alleges that the defendants confiscated his proposed civil action and exhibits.

On April 27, 2005 plaintiff 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 May 2, 2005 defendants cross-moved for summary judgment. These motions for summary judgment 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).

Plaintiff moves to strike the affidavit of defendant Lebbeodus Brown because Exhibit 105 attached to his affidavit was now complete. After some delay the complete exhibit has now been provided for plaintiff's inspection. Accordingly, plaintiff's motion to strike the affidavit will be denied.

#### 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 Raynell Morgan is an inmate currently incarcerated at the Wisconsin Secure Program Facility, Boscobel, Wisconsin (WSPF). At all times material to this action defendant Gerald Berge was the warden at WSPF. Defendant Gary Boughton is the security Director at WSPF. Defendant John Grondin is a Lieutenant and defendant Lebbeus Brown is a Captain at WSPF. Captain Brown is the WSPF Disruptive Groups Coordinator at WSPF.

All inmates at WSPF have access to legal libraries on the housing units as well as the institution law library, legal loans, legal property, the assistance of other inmates and access to other legal services such as Legal Aid for Incarcerated Persons (LAIP).

On December 10, 2003 the WSPF mailroom officer gave defendant Brown a letter and materials which were being mailed from the institution from plaintiff to Mrs. Diane Block in Richland Center, Wisconsin. Defendant Brown reviewed this mailing in his capacity as Disruptive Groups Coordinator. This mailing consisted of a letter addressed to "Comrade Diane" dated December 7, 2003 requesting her to make copies of the enclosure, a blank Western District of Wisconsin Complaint form, an intentional tort action captioned in the Dane County Circuit Court and two pages entitled "The Responsibility Program" signed by Gen. Kamau Tebogo Zulu Damuli, (O.L.B.U) a/k/a Raynell D. Morgan. Defendant Brown determined that the mailing violated Wisconsin Administrative Codes

DOC 303.20 and 303.31 which prohibit gang activity and use of a title other than Mr., Ms., Miss or Mrs.

Defendant Brown advised plaintiff that this mail had not been sent. On December 17, 2003 defendant Brown issued plaintiff a conduct report alleging that plaintiff violated rules 303.20 and 303.31 when he attempted to mail a letter and other materials to a Diane Block in Richland Center, Wisconsin. Defendant Grondin conducted the disciplinary hearing and found plaintiff guilty of the rule violations.

Plaintiff had sufficient monies in his inmate account to pay for copying charges at the institution. He could have had his complaint copied at the institution if he wished to file it by a certain date. Plaintiff was not prevented from filing his civil complaint in Dane County Circuit Court.

#### MEMORANDUM

Plaintiff claims that he was denied access to the court when defendant Brown confiscated copies of his civil action that he was sending to Diane Block to make copies. 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).

Plaintiff's confiscated copy of his civil action to Dane County Court was in a letter mailed to a private individual who he had asked to copy. His mail to the court was not impeded. He could have copied the complaint in the institution and mailed it to the court.

Further, plaintiff has not shown that he was injured by the confiscation of his complaint. He could have submitted a civil action to the Dane County Circuit Court at any time. Accordingly, plaintiff was not denied access to the courts.

It is not relevant to this case whether plaintiff violated the rules of the institution. The only issue is whether the confiscation of a copy of a proposed complaint denied him access to the courts. He had the ability to copy the complaint in the institution and mail it to the Court. As a matter of law plaintiff was not denied access to the Courts and his First Amendment rights were not violated.

Defendants are entitled to judgment in their favor and their motion for summary judgment will be granted. 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 claim must

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

ORDER

IT IS ORDERED that plaintiff's motion to strike the affidavit of defendant Brown is DENIED.

IT IS ORDERED that 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 defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice..

Entered this 2<sup>nd</sup> day of June, 2005.

BY THE COURT:

/s/

---

JOHN C. SHABAZ  
District Judge