

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

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JOHNNY LACY, JR.,

Plaintiff,

v.

MEMORANDUM AND ORDER  
05-C-277-S

GERALD A. BERGE,

Defendant.

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Plaintiff Johnny Lacy, Jr. was allowed to proceed on his First Amendment and Eighth Amendment claims against defendant Gerald Berge. In his complaint plaintiff alleges that he was denied Kosher meals and was denied dental treatment for a serious condition.

On June 17, 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. This motion has been fully briefed and is 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 defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

At all times material to this action plaintiff Johnny Lacy, Jr., was incarcerated at the Wisconsin Secure Program Facility, Boscobel, Wisconsin (WSPF). Defendant Gerald Berge was the Warden at WSPF from September 27, 1998 until December 27, 2004 when he retired.

Defendant Berge had general supervisory authority over WSPF operations but did not supervise the day-to-day operations of medical/dental services at the Health Services Unit. Berge had no personal involvement in any decision or action related to plaintiff's dental care at WSPF.

Todd Overbo is the chaplain at WSPF. On September 25, 2001 plaintiff signed and submitted a religious preference form stating that he was Jewish. On January 13, 2002 he requested Kosher meals. Overbo could not approve this request immediately because no one at WSPF had ever requested Kosher meals. Plaintiff's request was to be considered and approved by Laura Wood, the Religious Coordinator in Madison, and the religious committee.

On April 8, 2002 at Wood's request Overbo interviewed plaintiff to determine his official religious preference and to identify his religious dietary needs. Plaintiff stated he was Jewish and wanted a kosher meal. He stated he wanted food that was "fit to eat" which included eggs, poultry, fish and no meat.

Wood met with the religious committee again to research plaintiff's requests. The committee was also drafting a policy governing all religious diets and contacted other institutions that provided such diets.

On July 9, 2002 plaintiff filed an inmate complaint because he did not have his kosher meals. On July 29, 2002 Wood recommended approval of plaintiff's kosher meals. A few days later plaintiff

wrote Deputy Warden Huibregtse and Anthony Broadbent, Food Service Supervisor, requesting coconut milk with all meals, raw fresh vegetable salad once a week, fruit salad one a week, garlic and onions with all cooked meals and no compressed man-made meals. On August 9, 2002 Huibregtse responded that the only change that could be made to the kosher diet would be to offer plaintiff animal free meals and cow's milk. In the alternative Huibregtse requested plaintiff to provide Jewish authority for the additional items.

On August 14, 2002 plaintiff rejected Huibregtse's offer. Pursuant to this rejection, plaintiff's Kosher diet was cancelled.

On November 7, 2002 DOC IMP 6B concerning religious diets was implemented. On March 11, 2003 plaintiff requested kosher meals that are prepared on Saturday and served on Sunday. Plaintiff's request was not consistent with Jewish kosher dietary laws.

On December 3, 2003 Berge contacted Overbo to determine why plaintiff was not receiving his requested kosher meals. Overbo informed him that plaintiff's requests were not consistent with the kosher diet.

On March 8, 2004 plaintiff completed another religious diet request for a standard kosher diet with no modifications. On April 28, 2004 Overbo approved plaintiff's request and plaintiff began receiving his kosher meals that day. On May 4, 2004 plaintiff requested he be taken off the kosher diet.

On November 4, 2004 plaintiff wrote to Ana Boatright, the new religious coordinator, complaining about not receiving kosher meals. On November 11, 2004 plaintiff submitted a request for kosher meals and specific milk such as coconut, soy or goat's milk. Overbo advised plaintiff that the kosher meals would be the same as he received in April 2004. Plaintiff responded that he received boiled meals not kosher meals. On January 13, 2005 Boatright informed plaintiff that the meals WSPF offered him had accommodated his religious diet request.

#### MEMORANDUM

Plaintiff claims that the defendant violated his First Amendment rights when he denied him a kosher diet. An inmate has the First Amendment right to a reasonable opportunity to practice his religion. Cruz v. Beto, 405 U.S. 319 (1972). This right may be restricted by regulations which are reasonably related to penological objectives. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987).

Although defendant was not personally involved in the decisions regarding plaintiff's kosher diet, plaintiff was provided a kosher diet when requested until he cancelled it. The diet plaintiff wanted was not a kosher diet but a modified diet, not consistent with Jewish dietary laws. Such a diet was not required for the practice of his religion. As a matter of law plaintiff's First Amendment rights were not violated.

Plaintiff alleges in his complaint that he was denied dental treatment. Defendant Berge was not personally involved in any alleged denial of dental treatment. Accordingly, his motion for summary judgment on both plaintiff's claims 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 (7<sup>th</sup> Cir. 1997).

ORDER

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

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 19<sup>th</sup> day of July, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ  
District Judge