

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

CRAIG THOMAS BATES,

Plaintiff,

v.

MEMORANDUM and ORDER

CATHERINE J. FARREY, AMY MORALES,
MS. KRUEGER, THERESA BRETTINGEN
and CAPTAIN HAREL,

05-C-513-S

Defendants.

Plaintiff Craig Bates was allowed to proceed on his Eighth Amendment deliberate indifference claim against defendants Catherine J. Farrey and Amy Morales. He was also allowed to proceed on his claim that he was denied access to the courts by defendants Farrey, Theresa Brettingen, Ms. Krueger and Captain Harel and on his First Amendment retaliation claim against defendant Farrey.

Defendants had previously moved to dismiss plaintiff's medical claim for his failure to sign a release of his medical records. This motion will be denied as Dr. Heinzl's affidavit indicates he has reviewed plaintiff's medical records.

On January 26, 2006 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. Plaintiff responded to this motion on February 27, 2006. No further briefing is required.

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. This motion has been fully briefed and is ready for decision.

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).

FACTS

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

At all times material to this action plaintiff Craig Bates was incarcerated at the New Lisbon Correctional Institution, New Lisbon, Wisconsin (NLCI). Defendant Catherine Farrey is the warden at NLCI. Defendant Amy Morales is a Unit Manager and defendant Daniel Harel is a Correctional Sergeant at NLCI Defendant Nancy Krueger is the Offender Records Supervisor and

defendant Theresa Brettingen is the Correctional Management Services Director at NLCI.

In late January 2005 plaintiff filed an inmate complaint concerning cold air blowing into his cell. In February 2005 a maintenance worker checked the temperatures in plaintiff's cell. The temperature was 69.6 on plaintiff's bed and the return air was 71.4 degrees. These temperatures exceeded the required temperature of 68 degrees. Plaintiff never requested to be seen in the Health Services Unit (HSU) for any problems caused by cold air.

On or around June 6, 2005 the City of New Lisbon reported that it had placed a non-toxic dye into one of the wells that service NLCI which made the water turn pink. The dye disappeared from the water system in a few days.

On June 28, 2005 plaintiff was seen in the HSU complaining of diarrhea he believed was caused by the water. Cultures of plaintiff's stools tested normal.

In July 2005 plaintiff complained that the lack of air in his cell triggered an asthma attack. He never requested to be seen by the HSU for this problem. During his incarceration at NLCI plaintiff's asthma was treated by prescription inhalers.

Inmates without sufficient funds in their general account to pay for paper, photocopy work or postage may receive no more than \$200.00 legal loan annually from the institution where they reside.

The \$200.00 limit may be exceeded with the Warden's approval if the inmate demonstrates an extraordinary need.

An inmate may request weekly 1 tablet of 8-1/2 x 11 paper, 50 sheets of plain paper, 1 pen, 2 legal size envelopes and 1 9-1/2 x 12 envelope which are deducted from the loan amount. Requests for photocopies may be made to the Records office on Monday and Thursday.

Plaintiff exhausted his 2005 legal loan limit on June 27, 2005. Based on his documented need plaintiff received an additional \$148.64 in legal loans.

Plaintiff filed a complaint with the Division Administrator that his legal mail was opened and withheld. On May 9, 2005 as a part of defendant Harel's investigation of plaintiff's complaint, he interviewed plaintiff. He ordered two officers to confiscate all plaintiff's legal mail to determine if any mail had been opened in error or delivered in a delayed manner. Because Bates believed defendant Harel was biased, Harel decided not to inspect plaintiff's mail and returned it to him within an hour.

On or about June 30, 2005 plaintiff asked that his wife and child be placed on his visitor list. This request was not approved because of plaintiff's prior abuse of his wife, his violation of previous restraining orders she had filed against him and his refusal to complete the domestic violence program at NLCI.

MEMORANDUM

Plaintiff was allowed to proceed on his claim that defendants Farrey and Morales were deliberately indifferent to his health because the ventilation system and the water at NLCI caused him injury. He also claims that he was denied access to the courts and that defendant Farrey retaliated against him when she denied him visitation with his wife and child. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

In his opposition brief plaintiff argues that he has not been allowed adequate time for discovery. He has been allowed a reasonable time for discovery and has not shown that any additional discovery would raise an issue of genuine material fact. Further, he was provided additional time to file his opposition brief to defendants' motion. In his brief he also argues that he was denied equal protection and due process but he did not raise these claims in his complaint.

Deliberate indifference of a serious medical need violates an inmate's Eighth Amendment rights. Estelle v. Gamble, 429 U.S. 97 (1976). Deliberate indifference is a subjective standard which requires that the defendant knew that plaintiff had a serious medical condition and acted with callous disregard to this condition. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious

harm exists and must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Plaintiff claims that defendants were deliberately indifferent to the health hazards of the ventilation system and the water. The undisputed evidence indicates that for a few days there was a non-toxic dye placed in the water by the City of New Lisbon. There is no evidence that drinking this water harmed plaintiff. Further there is no evidence that the poor ventilation harmed plaintiff. Accordingly, defendants are entitled to judgment in their favor on this Eighth Amendment claim because plaintiff has not shown that defendants were deliberately indifferent to any serious harm to plaintiff.

Plaintiff claims that defendants Catherine Farrey, Theresa Brettingen, Nancy Krueger and Daniel Harel denied him access to the Courts. To prevail on this claim plaintiff must show that he was prejudiced in pending or contemplated litigation. Lewis v. Casey, 518 U.S. 343, 354 (1996). Plaintiff has failed to demonstrate prejudice. Accordingly, defendants are entitled to judgment in their favor on this claim.

To prevail on his retaliation claim plaintiff must prove that he engaged in protected conduct, that defendant Farrey knew of this conduct, that defendant was motivated by this knowledge and that the removal of plaintiff's wife and child from his visitor list would not have occurred absent plaintiff's protected conduct.

Mt. Healthy City School District v. Doyle, 429 U.S. 274, 287 (1977).

The undisputed facts indicate that plaintiff's wife and child would have been removed from his visitor list based on plaintiff's past conduct regardless of plaintiff's protected conduct. Accordingly, defendant Farrey is entitled to judgment on plaintiff's retaliation claim.

Defendants' motion for summary judgment will be granted. Judgment will be entered in favor of defendants against plaintiff dismissing his complaint and all claims contained therein with prejudice and costs. Plaintiff's motion for a copy of his complaint will be denied as cumulative and unnecessary at this time.

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 defendants' motion to dismiss plaintiff's medical claim for his failure to sign a release of his medical records is DENIED.

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

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

Entered this 1st day of March, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge