

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

LUIS VASQUEZ,

Petitioner,

ORDER

v.

05-C-528-C

MATHEW FRANK, Secretary,
PHIL KINGSTON, Warden,
GARY McCAUGHTRY, Former Warden,
MARC CLEMENTS, Security Director,
MIKE THURMER, Deputy Warden,
CYNTHIA THORPE, ORA,
CURTIS JANSSEN, HSCUM,
STEVEN SCHUELER, HSCSS,
BELINDA SCHRUBBE, HSUM,
GARY ANKARLO, PSUS,
RICK RAEMISCH, OOS,
SANDRA HAUTAMAKI, CCE,
JAMES MUENCHOW, ICE,
JOHN McDONALD, Social Worker,
STEVEN CASPERSON, Administrator,
DAN WESTFIELD, Security Chief,
GEORGE KAEMMERER, PSU,
DOCTOR LARSON, HSU,
CAPT. O'DONOVAN, and
STANLEY TONN, ICE,

Respondents.

The Court of Appeals for the Seventh Circuit has issued its mandate to allow petitioner Luis Vasquez leave to proceed in forma pauperis on his claims that the lighting and ventilation in his cell beginning in 2002 and continuing until March 2006, violated his Eighth Amendment rights. The court upheld this court's decision to deny petitioner leave to proceed in forma pauperis on all of his other claims. None of the respondents have been served with petitioner's complaint. Ordinarily, in circumstances such as this where the court of appeals has determined that petitioner may proceed on some but not all of his claims, it is necessary to determine which respondents are alleged to have been personally involved in the claimed violations. In this case, petitioner has simplified the task. He has moved for leave to file an amended complaint aimed almost exclusively at the lighting and ventilation claims and he has voluntarily dismissed from the lawsuit former respondents Cynthia Thorpe, Sandra Hautamaki, Capt. O'Donovan and Stanley Tonn. However, he has added to the caption of his amended complaint proposed new respondents Steven B. Casperson, Dan Westfield, George Kaemmerer, and Doctor Larson. Therefore, I have amended the caption of this order to list the names of all of the individuals petitioner wishes to sue and will screen the proposed amended complaint to insure that petitioner has alleged the requisite personal involvement of each respondent.

ALLEGATIONS OF FACT

Petitioner is an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. From December of 2002 until sometime in 2006, he was confined in the Health Segregation Complex at the Waupun Correctional Institution in Waupun, Wisconsin.

Respondent Matthew Frank is Secretary of the Wisconsin Department of Corrections and Rick Raemisch is the Deputy Secretary. Respondent Phil Kingston is the current warden and respondent Gary McCaughtry was the former warden at Waupun Correctional Institution.

The remaining respondents work in the following capacities at Waupun: Marc Clements is Security Director; Mike Thurmer is Deputy Warden; Curt Janssen is a captain and now former "HSCUM"; Steven Schueler is a Captain and "HSCSS"; Belinda Schrubbe is an "HSUM"; Gary Ankarlo is a "PSUS"; James Muenchow is an institution complaint examiner; John McDonald is a social worker; Steven Casperson is an administrator; Dan Westfield is Security Chief; George Kaemmerer is a "PSU"; and Doctor Larson works in the Health Services Unit.

Petitioner suffers from emotional distress, depression, anxiety and other psychological problems. In the health segregation complex at Waupun, the cells are illuminated 24 hours a day. Although petitioner was permitted to lower the lighting, he could not turn it off completely. As a result, his mental illness was aggravated and he suffered insomnia, migraine headaches, eye pain and blurry vision. He was given medication to fight the headaches and

psychological effects, but was not allowed to extinguish the light. On June 29, 2004, petitioner filed a grievance. On July 9, 2004, he was given Excedrine for his headaches. For approximately two months, he received the medication, at which point respondent Doctor Larson discontinued it without examining petitioner or giving him an opportunity to protest the discontinuation. On August 3, 2004, respondent Muenchow recommended dismissal of the complaint. Respondent McCaughtry dismissed the complaint on August 11, 2004; corrections complaint examiner Hautamaki recommended dismissal of the appeal and respondent Raemisch accepted the recommendation and dismissed the appeal on August 27, 2004.

Petitioner also suffered from inadequate ventilation during his confinement in the health segregation complex. The air contained dust and was stale. The temperature was too cold in the winter and too hot in the summer. As a result, petitioner's nose became congested and at times he coughed up blood, had nose bleeds and suffered heat exhaustion, dizziness and insomnia. The excessive heat also caused petitioner to suffer side effects from his medications, sweat constantly during the summer and experience difficulty breathing. Petitioner's breathing difficulties were treated with a nasal spray.

On July 5, 2004, petitioner complained about the ventilation in correspondence directed to respondents Janssen, Schueler and Clements. In addition, petitioner relayed his health concerns and complaints about the ventilation to "psychological services staff" and

“health services staff,” who failed to act upon or note petitioner’s concerns in his clinical file or report petitioner’s condition to their superiors. On July 12 and August 5, 2004, petitioner filed grievances. Respondent Muenchow recommended dismissal of one of petitioner’s complaints and respondent McCaughtry accepted the recommendation. On August 11, 2004, petitioner appealed one of the dismissals and respondent Raemisch accepted the recommendation and dismissed the appeal.

Respondents Frank, McCaughtry, Clements, Janssen, Schueler, Schrubbe, Ankarlo, Raemisch, Muenchow, McDonald and Kaemmerer each were aware of the conditions of plaintiff’s confinement in the health segregation complex and of plaintiff’s grievances concerning the lighting and ventilation and the adverse effects these conditions had on his health and none took any action to correct the situation.

Respondents Kingston, Thurmer, Casperson and Westfield

may not have been aware of the issues and violations herein, [but] they may still be held liable for the actions, conduct, and wrongdoing of their subordinates, because those subordinate individuals failed to stop and correct the violations and even failed to provide to their superior(s) with input relating to the problems, issues, and conditions herein this complaint. Thus, the above superiors may still be held liable for failure to train and supervise those subordinates.

OPINION

As the Court of Appeals for the Seventh Circuit stated in its order of December 13,

2006, prison officials violate the Eighth Amendment when they deliberately ignore a serious medical condition or create an unreasonable risk of serious damage to an inmate's future health. Petitioner's allegations are sufficient to state a claim that he suffered physical and mental adverse reactions to his exposure to 24-hour lighting, inadequate ventilation and extreme heat and that respondents Frank, McCaughtry, Clements, Janssen, Schueler, Schrubbe, Ankarlo, Raemisch, Muenchow, McDonald and Kaemmerer knew about the conditions and plaintiff's health problems and did nothing to change the conditions. Therefore, petitioner will be allowed to proceed in forma pauperis on his Eighth Amendment conditions of confinement claim with respect to these respondents.

In addition, petitioner has added to his amended complaint a new claim against respondent Doctor Larson. Petitioner contends that on July 9, 2004, he was given Excedrine for his migraine headaches and that after two months on the medication, Larson discontinued it without examining petitioner or allowing petitioner to explain his need for the medication. Although he does not say so directly, I presume that the Excedrine tablets petitioner was taking were Excedrine's migraine tablets. Ordinarily, migraine headaches are characterized by throbbing pain that begins on one side of the head and often are accompanied by nausea and by hypersensitivity to light and sound. The pain can be disabling. AMERICAN MEDICAL ASSOCIATION, COMPLETE MEDICAL ENCYCLOPEDIA 632 (2003). Although petitioner has not described in detail the severity

of his pain, he has alleged enough to suggest that he had a serious medical need and that respondent Larson was deliberately indifferent to it. Therefore, petitioner will be allowed to proceed in forma pauperis on his claim that respondent Larson was deliberately indifferent to his serious medical needs when he discontinued petitioner's migraine headache medication without first examining petitioner or allowing petitioner to explain his need for the medication.

Petitioner will not be allowed to proceed in forma pauperis on his conditions of confinement claim with respect to respondents Kingston, Thurmer, Casperson and Westfield. As petitioner alleges, these respondents were not personally involved in depriving him of his Eighth Amendment rights. Petitioner appears to want to sue them either because he believes they should be held responsible for the actions of their subordinates or because they failed to train those subordinates. However, liability under § 1983 arises only through a defendant's personal involvement in a constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994). There is no place in a § 1983 action for the doctrine of respondeat superior, under which a supervisor may be held responsible for the acts of his subordinates. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-695 (1978); Gentry, 65 F. 3d at 561. Moreover, it is impossible to imagine how respondents Kingston, Thurmer, Casperson and Westfield could be held responsible for failing to train the other respondents with regard to

the lighting and ventilation in the health segregation complex at Waupun or with regard to respondent Doctor Larson's decision to discontinue petitioner's headache medicine. Petitioner does not suggest that respondents Kingston, Thurmer, Casperson and Westfield had any particular expertise in the design and operation of the prison's lighting and ventilation systems or in medicine so as to impute to them a duty to train their subordinates in these matters. Therefore, respondents Kingston, Thurmer, Casperson and Westfield will be dismissed from this lawsuit.

ORDER

IT IS ORDERED that petitioner Luis Vasquez's motion to amend his complaint and voluntarily dismiss respondents Cynthia Thorpe, Sandra Hautamaki, Capt. O'Donovan and Stanley Tonn is GRANTED.

Further, IT IS ORDERED that

1. Petitioner's request for leave to proceed in forma pauperis is GRANTED on his claim that respondents Matthew Frank, Gary McCaughtry, Marc Clements, Curtis Janssen, Steven Schueler, Belinda Schrubbe, Gary Ankarlo, Richard Raemisch, James Muenchow, John McDonald and George Kaemmerer violated his Eighth Amendment rights by exposing him to 24-hour lighting, inadequate ventilation and extreme heat.

2. Petitioner's request for leave to proceed in forma pauperis is GRANTED on his

claim that respondent Doctor Larson violated his Eighth Amendment rights by cutting off petitioner's migraine medication without examining petitioner or allowing petitioner to explain his need for the medication.

3. Petitioner's request for leave to proceed in forma pauperis is DENIED on his claim that respondents Phil Kingston, Mike Thurmer, Steven Casperson and Dan Westfield violated his Eighth Amendment rights by failing to prevent their subordinates, through training or otherwise, from exposing petitioner to 24-hour lighting, poor ventilation and extreme heat and cold.

4. Respondents Cynthia Thorpe, Sandra Hautamaki, Capt. O'Donovan, Stanley Tonn, Phil Kingston, Mike Thurmer, Steven Casperson and Dan Westfield are DISMISSED from this action.

5. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

6. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. Petitioner has been paying his filing fee in monthly installments. The payments

must continue until the fees for filing this lawsuit and petitioner's appeal from this court's earlier decision to deny him leave to proceed in forma pauperis has been paid in full.

8. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's amended complaint and this order are being sent today to the Attorney General for service on the state respondents.

Entered this 29th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge