

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

JOSEPH VAN PATTEN,

Plaintiff,

v.

D.O.C., MATTHEW FRANK,
WARDEN DEPPISCH,
JOSEPH LADWIG and DR. LUY,

Defendants.

ORDER

06-C-374-C

On January 3, 2007, I considered plaintiff Joseph Van Patten's motion for an order directing prison officials to allow him to keep in his possession papers relating to this lawsuit and to respond more quickly to his requests for postage. I denied the motion after concluding that plaintiff had not shown that such an order was necessary. Now plaintiff has submitted a communication addressed to this court, a communication addressed to Magistrate Judge Stephen Crocker, and a copy of a letter addressed to counsel for defendants, Assistant Attorney General Amanda Tollefsen. I construe the documents together as a motion for reconsideration of the January 3 order.

In his motion, plaintiff reasserts that he is being denied access to the Federal Rules of Civil Procedure and that the property box in his cell is too small to hold all the documents

he needs to pursue this action, an appeal in his 13-year-old criminal case, a personal injury claim and a child support case. He suggests that at one time, he had access to all of his property and legal papers and that he believes jail officials are making it difficult for him to engage in his legal activities in retaliation for his legal pursuits. To illustrate the point, he notes that recently he was put in a small room to view the Federal Rules of Civil Procedure and, shortly after his arrival, the lights were turned off. He says he had no way of informing jailers of the problem but that the jailer who shut off the lights “could see what he did.” According to plaintiff, the lights were not turned on again until 35 minutes later, when another jailer came past the room. At that time, plaintiff asked to be let out. It is unclear why plaintiff did not remain in the room after the lights were turned on to read what he had wanted to read.

In his letter to Magistrate Judge Crocker, plaintiff raises a new issue. He contends that Jail Administrator Steve Burroughs, who is not a party to this lawsuit, is retaliating against him by making him pay 20% of his gift money toward the filing fees in this case and that he took the remainder to repay the county for money it had loaned him to make copies of his legal papers. He states that he is given only 5 pieces of paper a week under the county’s “indigency packet” and this makes it hard for him to file everything he wants to file.

It is understandable that plaintiff wishes to diligently pursue the litigation he has begun or defend against actions in which he is the defendant. However, it is not appropriate for him to ask in the context of this lawsuit for court intervention in matters unrelated to

this lawsuit. With respect to plaintiff's ability to prosecute this lawsuit, I note that plaintiff used 7 pages to explain his many concerns and that he did not utilize the back of any one of those pages. He has no looming deadlines. With self-discipline and better focus, he should be able to organize his legal work so as to engage in appropriate discovery and gather other evidence to prove his claims in this case. There is no reason he cannot keep on hand in his bin only those documents that are immediately pertinent to a particular motion or discovery request and exchange them as necessary for documents relevant to his preparation of motion or other papers in his other cases.

As for plaintiff's contention that gift money is wrongfully being taken from him, plaintiff should know that the Court of Appeals for the Seventh Circuit has ruled that prisoners must pay 20% of "whatever sums enter a prison trust account, disregarding the source," and the fact that they are "gifts or bequests from family members does not shelter them from § 1915(b)(2)." Lucien v. Detella, 141 F.3d 773, 776 (7th Cir. 1998).

Plaintiff's complaint about having to pay back legal loans afforded him lacks merit. Plaintiff admits that he is completely dependent on the county to loan him money to finance his legal endeavors. However, the county is under no constitutional obligation to provide him with financial assistance in pursuing his civil litigation. Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003). There is "no constitutional entitlement to subsidy" to prosecute civil lawsuits. Lewis v. Sullivan, 279 F.3d 52, 528 (7th Cir. 2002). Therefore, he must, like any other person on a tight budget, make careful choices about how he uses those

resources. Here, plaintiff is proceeding on claims for money damages against defendants for their alleged deliberate indifference to his serious medical needs stemming from a leg injury he sustained in December 2004. The statute of limitations on such claims is six years. He might have chosen to wait until he finished with one or more of his other actions before pursuing this claim. His decision not to do so subjects him to consequences with which he must now live.

As for plaintiff's contention that jail officials are retaliating against him for filing legal actions, that is not a claim that was raised in plaintiff's complaint in this lawsuit. If plaintiff believes that jail officials are retaliating against him for filing this or any other lawsuit, he will have to raise the matter in a separate action.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the January 3, 2007 order denying his motion for an directing prison officials to allow him to keep in his

possession papers relating to this lawsuit and to respond more quickly to his requests for postage is DENIED.

Entered this 11th day of January, 2007.

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