

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

DAVID J. CLARK,

Plaintiff,

v.

GAIL STEVENSON, JOHN JONES
JAMIE L. JACOBS and WANDA W.
BALDWIN,

Defendants.

OPINION and ORDER

06-C-419-C

In this civil action for declaratory and monetary relief, plaintiff David Clark, a patient at the Wisconsin Resource Center in Winnebago, Wisconsin, contends that defendants Gail Stevenson, John Jones, Jamie Jacobs and Wanda Baldwin issued him “warnings” and “counsels” for alleged rule violations in retaliation for his filing a lawsuit against defendant Baldwin. Now before the court is defendants’ motion for summary judgment. Because the undisputed facts show that defendants did not retaliate against plaintiff, the motion will be granted.

From defendants’ proposed findings of fact and plaintiff’s responses to them, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff David Clark is a patient at the Wisconsin Resource Center in Winnebago, Wisconsin, confined civilly pursuant to Wisconsin's Sexual Predator Law.

Defendants Gail Stevenson and Jamie Jacobs are employed as psychiatric care technicians at the Wisconsin Resource Center. As psychiatric care technicians, defendants Stevenson and Jacobs are required to report and document their observations regarding patients' attitudes and behaviors.

Defendants John Jones and Wanda Baldwin are psychiatric care supervisors at the Wisconsin Resource Center. As supervisors, defendants Jones and Baldwin are required to investigate and respond to any unusual incidents or injuries involving patients and staff at the resource center.

B. Winnebago County Lawsuit

On September 23, 2005, a hearing was held in Winnebago County Case Number 2005-SC-3163. In that case, plaintiff sued several Wisconsin Resource Center employees, including defendant Baldwin, for "improperly forcing him to wear socks with his sandals." After hearing testimony from all parties, a court commissioner dismissed the lawsuit.

C. Counsels and Warnings

The Wisconsin Resource Center utilizes an incremental behavior management program. When a patient violates a rule, he is first given a “counsel” to inform him about the policy or rule he has violated. Counsels are designed as a teaching tool. Whenever one is given, it is documented in the patient’s progress notes.

“Warnings” are given to patients for rule infractions that occur after a counsel has been given. Warnings provide patients with the opportunity to correct their behavior before formal sanctions are given. When patients are issued warnings, the warnings are documented in the patient’s progress notes.

On August 11, 2005, defendant Jones issued plaintiff a warning for an outburst plaintiff had when staff referred to him by his last name.

On October 2, 2005, defendant Stevenson gave plaintiff a counsel for wearing his bathrobe with nothing underneath it when he walked from his bedroom to the communal bathroom. The following day, when plaintiff repeated the behavior, defendant Jones issued him a warning.

On October 14, 2005, defendant Jacobs issued plaintiff a warning for standing naked in his room with an erection while defendant Baldwin was conducting a patient count.

On November 1, 2005, plaintiff told defendant Jacobs that he would not go to dinner

unless Jacobs was “on the menu.” As a result of his comment, defendant Baldwin issued plaintiff a warning for disrespecting a staff member.

On November 10, 2005, plaintiff asked a psychiatric care technician to bring him bleach from her home. When defendant Jones confronted plaintiff about his request, plaintiff “acted surprised” and said he could not control himself because he was impulsive. When plaintiff repeated his request to the technician later that same day, defendant Jones issued plaintiff a warning.

Before plaintiff sued defendant Baldwin, he did not receive warnings or counsels even though he had engaged in the same behavior that earned him counsels and warnings after the lawsuit was filed.

DISCUSSION

In the court’s August 15, 2006 screening order, I allowed plaintiff to proceed on his claim that defendants Stevenson, Jones, Jacobs and Baldwin violated his constitutional rights by issuing him counsels and warnings in retaliation for his filing a civil lawsuit against defendant Baldwin. As I explained in that order, civil pretrial detainees have a constitutional right of access to the court to litigate nonfrivolous lawsuits, Lock v. Jenkins, 641 F.2d 488, 498 (7th Cir. 1981), and it is well established that conduct which does not independently violate the Constitution may form the basis for a retaliation claim when undertaken with an

improper, retaliatory motive. Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005).

Plaintiff alleged that the counsels and warnings issued by defendants Stevenson, Jones, Jacobs and Baldwin were adverse actions taken because defendants were angry that he had filed a lawsuit against defendant Baldwin. Babcock v. White, 102 F.3d 267, 275 (7th Cir. 1996). However, there are several problems with the evidence adduced in support of his allegations.

Although filing nonfrivolous lawsuits is an act protected by the right of access to the courts, filing a frivolous lawsuit is not. The undisputed facts are that in Winnebago County Case Number 2005-SC-3163, plaintiff charged defendant Baldwin with forcing him to wear socks with his sandals—a complaint wholly lacking in legal merit, as recognized by the court commissioner who dismissed the action against defendants. Because plaintiff had no constitutional right to litigate his frivolous claim, any retaliatory action taken by defendants in response to the lawsuit would not have violated plaintiff’s constitutional rights, however unprofessional such retaliation would have been. For that reason alone, defendants’ motion for summary judgment could be granted.

Even if the lawsuit plaintiff filed against defendant Baldwin had been legitimate, plaintiff has adduced no evidence showing that the counsels and warnings defendants gave plaintiff were “adverse actions” of the type that could reasonably be considered retaliatory. Defendants did not sanction or punish plaintiff: they merely informed him that if he

continued his inappropriate behavior, he could be punished in the future. Because plaintiff has adduced no evidence that the actions taken by defendants had any negative effect on him, he has failed to show that the action was retaliatory.

Plaintiff admits that he engaged in inappropriate conduct for which he was issued counsels and warnings, including repeated acts of harassment directed toward defendant Baldwin. Although he may believe that the timing of defendants' decision to "crack down" on his admittedly bad behavior was motivated by his filing of a frivolous lawsuit against defendant Baldwin, that does not change the fact that defendants' action did not violate his constitutional rights. Defendants' motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment of defendant Gail Stevenson, John Jones, Jamie Jacobs and Wanda Baldwin is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 11th day of April, 2007.

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