

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

DAVID CLARK,

Petitioner,

v.

JENNIFER BLINDAUER,

Respondent.

OPINION and ORDER

07-C-171-C

In this proposed civil action for monetary relief, brought under 42 U.S.C. § 1983, petitioner David Clark, a patient at the Wisconsin Resource Center in Winnebago, Wisconsin, contends that respondent Jennifer Blindauer retaliated against him in violation of the First Amendment by refusing to make him photocopies of two legal papers.

Petitioner seeks leave to proceed without prepayment of fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Because he is a patient and not a prisoner, petitioner is not subject to the 1996 Prison Litigation Reform Act.

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, when a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 28 U.S.C. § 1915(e). Because respondent did not deprive petitioner of any protected liberty interest, petitioner will not be granted leave to proceed in forma pauperis.

From petitioner's complaint, I draw the following allegations of fact.

FACTUAL ALLEGATIONS

A. Parties

_____Petitioner David Clark is a patient at the Wisconsin Resource Center in Winnebago, Wisconsin. Respondent Jennifer Blindauer is a psychiatric care technician at the Wisconsin Resource Center.

B. Photocopies

On the afternoon of March 15, 2007, petitioner asked respondent Blindauer to make him photocopies of two pages of legal papers sometime during her shift. She agreed to do

so. A short time later,

a unit manager summoned Clark to the unit conference room to inquire into recent complaints Clark ha[d] leveled against Blindauer for unprofessional, forbidden behavior exhibited; Blindauer alerted Clark to the manager's summons and indicated where he was waiting to speak to [petitioner].

When petitioner finished talking to the unit manager, respondent refused to copy his legal papers.

DISCUSSION

Petitioner alleges that after he asked respondent to make him a photocopy of two pages of legal material, respondent told petitioner that his unit manager wanted to talk to him about complaints petitioner had lodged against her. When petitioner finished talking with the unit manager, respondent allegedly refused to make petitioner the photocopies she had agreed to make earlier. Petitioner contends that respondent's actions amounted to retaliation in violation of his constitutional rights.

Civil detainees, such as petitioner, have a constitutional right of access to the courts. Lock v. Jenkins, 641 F.2d 488, 498 (7th Cir. 1981). Because the filing of administrative grievances is often a mandatory precursor to suit, the filing of such grievances is also protected. It is not clear whether the complaints petitioner made about respondent to the unit manager were formal grievances intended as a precursor to more formal court action.

Assuming that they were, and were therefore protected by petitioner's right of access to the courts, the next question is whether respondent violated petitioner's rights by refusing to make the photocopies he had asked her to make.

When a government official engages in "[a]n act taken in retaliation for the exercise of a constitutionally protected right," the person against whom the action was taken is entitled to sue under § 1983 "even if the act, when taken for a different reason, would have been proper." Lekas v. Briley, 405 F.3d 602, 614 (7th Cir. 2005). Therefore, to the extent that petitioner is contending that respondent took actions against him in retaliation for his making complaints against her, he has sketched the outline of a retaliation claim.

However, the inquiry does not end there. There is a venerable saying that "the law cares not for trifles" (in Latin, de minimis non lex curat). Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214, 231 (1992). Whether a particular activity is a de minimis deviation from a prescribed standard is determined with reference to the purpose of the standard. Id.

The First Amendment's guarantee against retaliation addresses the threat that concern about ill treatment will dissuade a person from choosing to exercise his constitutional rights. See, e.g., Revels v. Vincenz, 382 F.3d 870, 876 (8th Cir. 2004) ("To establish a First Amendment retaliation claim under 42 U.S.C. § 1983, the plaintiff must show . . . the government official took adverse action against him that would chill a person of ordinary

firmness from continuing in the activity. . . .”). In the context of this lawsuit, the question is whether petitioner could prove at some later stage in these proceedings that he was “chilled” from filing patient grievances out of concern that staff members might refuse to make him photocopies. Such a proposition is preposterous.

Petitioner alleges that respondent, a psychiatric care technician, refused to copy two pages of unidentified legal documents for him because she was angry that he had filed grievances about her. At most, respondent’s alleged refusal to make the photocopies was a de minimis act of retaliation against petitioner that does not rise to constitutional proportions. Consequently, petitioner will be denied leave to proceed in forma pauperis on his claim against respondent.

ORDER

IT IS ORDERED that petitioner David Clark’s request for leave to proceed in forma pauperis is DENIED. The clerk of court is directed to close this case.

Entered this 29th day of March, 2007.

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