

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

CHARLES AMBLE,

Plaintiff,

v.

MEMORANDUM and ORDER

STEVE WATTERS and NICK YACKOVICH,

07-C-221-S

Defendants.

The above entitled matter was transferred to this Court on April 16, 2007 from the United States District Court for the Eastern District of Wisconsin. Plaintiff was allowed to proceed on his First Amendment claim against defendants Steve Watters and Nick Yackovich. In his amended complaint he alleges that the defendants denied him visits with his daughter while he was housed at the Sand Ridge Treatment Center.

On July 9, 2007 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. Pursuant to this Court's May 24, 2007 scheduling order plaintiff's brief in opposition to this motion was to be filed not later than July 30, 2007 and has not been filed to date.

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.

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.

Plaintiff Charles Amble is detained at the Sand Ridge Secure Treatment Center pursuant to Wis. Stats. §980.04(3). Although he is not committed, a court has concluded that there is probable cause to believe that plaintiff is a "sexually violent person."

Defendant Steve Watters is the Director of the Sand Ridge Secure Treatment center. Defendant Dr. Nick Yackovich is the Treatment Coordinator of the Corrective Thinking Program at Sand Ridge Secure Treatment Center. Dr. Yackovich is a member of the treatment team assigned to treat plaintiff.

On December 5, 2005 Kimberly Jo Alverson Cerros and her daughter Soccora applied to visit plaintiff. Soccora is plaintiff's minor daughter. The request was denied by plaintiff's treatment team pursuant to Sand Ridge Secure Treatment Center Policy SR-126 because plaintiff had a victim profile including children under the age of 18.

On January 22, 2006 Kimberly Alverson Cerros appealed the denial of visitation to defendant Watters. He concluded that it would be inappropriate to reverse the decision of the treatment team to deny visitation privileges for plaintiff's minor daughter Soccora. Watters based his decision on the goal of protecting children from possible exploitation.

Plaintiff requested that his daughter Soccora be added to his list of approved visitors. On October 26, 2006 a meeting was held at the request of plaintiff and his family to address this request. Patient Care Technician Angie Kotten, Patient Care Supervisor Dennis Snyder, Unit Manager Melanie Faust, Dr. Yackovich, Cindy Lukas (plaintiff's mother) and Kim Alverson Cerros were present at this meeting. Dr. Yackovich explained that plaintiff was not progressing with his treatment and that treatment should be plaintiff's primary focus.

Defendant Yackovich believed that the denial of visitation by Soccora was appropriate to protect her and to advance plaintiff's rehabilitation. He believes that the decision to deny visits

between plaintiff and his minor daughter was appropriate based on his professional judgment.

Plaintiff was allowed to correspond with his daughter by letter.

MEMORANDUM

Plaintiff was allowed to proceed on his First Amendment claim against the defendants. In opposing defendants' motion for summary judgment plaintiff cannot rest on the mere allegations of his pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has failed to submit any affidavit or other evidence which contradicts the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Plaintiff is confined at the Sand Ridge Treatment. Although he is not committed, a court has concluded that there is probable cause to believe that plaintiff is a "sexually violent person." Detainees charged with sexual offenses "may be subjected to conditions that advance goals such as...assuring the safety of others, even though they may not be punished." Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003).

Where plaintiff is considered an inmate of a correctional institution, the regulation concerning visits is valid if it is reasonably related to legitimate penological interests. Turner v.

Safely, 482 U.S. 78 (1978). Plaintiff was denied visits with his daughter pursuant to a policy that protected minors and advanced the rehabilitation of sexually violent persons.

In Wirsching v. State of Colorado, 360 F.3d. 1191 (10th Cir. 2004), the Court held that a similar policy which required the denial of visitation of children under 18 was reasonably related to the legitimate interests of protecting the child and furthering the rehabilitation of the confined person. Based on Turner and Wirsching the Court finds that the policy denying Plaintiff visits with his minor daughter was reasonably related to the legitimate penological interests of protecting minors and rehabilitating sexually violent persons. Plaintiff's First Amendment rights were not violated when he was denied visits with his minor daughter.

Where plaintiff is considered to be a patient, liability may be imposed only when the decision by a professional is a substantial departure from accepted professional judgment, practice or standards. Youngberg v. Romero, 457 U.S 307, 323 (U.S. 1982). The decision to deny plaintiff with his minor daughter was appropriate based on the professional judgment of both defendants. No evidence has been submitted to show that this was a departure from accepted professional judgment, practice or standards. Accordingly, plaintiff's constitutional rights were not violated.

Defendants are entitled to judgment in their favor as a matter of law. Accordingly, their motion for summary judgment will be granted.

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 for summary judgment is GRANTED.

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 3rd day of August, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge