

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

KENNETH VALENTINE AWE,

Plaintiff,

v.

RGCI WARDEN JEFF ENDICOTT and
MS. GUNDERSON, Health Service Manager,

Defendants.

ORDER

07-C-309-C

In an order dated October 10, 2007, I stayed a decision whether to grant plaintiff Kenneth Awe's motion for emergency injunctive relief on his claim that defendants "had taken [his] property away from [him] and removed [his] legal documents." I noted that it was not reasonable to expect plaintiff to be able to prosecute his case or defend against a motion for summary judgment if he could not refer to his file of the case. Therefore, I asked defendants to advise the court how long plaintiff would be separated from his legal documents so that I could determine whether the separation was physically preventing him from prosecuting this case.

Now defendants have filed a response dated October 17, 2007, in which they explain

that plaintiff has been separated from his legal materials on two separate occasions. According to defendants, plaintiff “was placed for one-day on medical observation . . . and did not have access to legal materials” on September 27, 2007. Again, on October 4, 2007, plaintiff was placed on observation status “where he remained for seven days without access to his legal materials.” Plaintiff is currently serving 240 days in disciplinary segregation for misconduct. There, although some of his property is restricted, he has “full access to his legal materials and to the satellite law library.”

From defendants’ response, I conclude that plaintiff’s separation from his legal materials was temporary and that he is not being physically prevented from prosecuting his case. Therefore, his motion for emergency injunctive relief will be denied.

A word of caution to plaintiff is in order, however. It appears that when plaintiff filed his motion on October 1, 2007, he had been separated from his papers on one occasion only and for the period of a single day. Although plaintiff was separated from his papers a second time shortly thereafter for a slightly longer duration, neither separation was of sufficient duration to warrant plaintiff’s filing of a motion for emergency injunctive relief. There are generous deadlines established in the magistrate judge’s preliminary pretrial conference order dated August 23, 2007, for seeking discovery, preparing or defending against dispositive motions and otherwise engaging in activities related to the prosecution of this case. Placement in observation status is ordinarily a placement of short duration intended “to

insure the inmate's safety and the safety of others if the inmate is mentally ill and dangerous, is dangerous to himself or herself, has a medical problem that requires separation from the population for treatment, or refuses testing for a communicable illness." Wis. Admin. Code § DOC 311.01. The conditions of confinement in observation status, including privileges and properties, are to be the same as the conditions the inmate had before he was placed in observation, § DOC 311.14(1), except that property may be withheld if, among other things, prison officials determine that an inmate may use it "for self-harm or to harm others." § DOC 311.14(1)(a). Thus, even if the frequency of plaintiff's placement in observation status were to increase, and if plaintiff's own uncontrolled behavior were to be the cause his separation from his legal papers, it is not likely that I could grant a motion for an order directing prison officials to give him the property. Rather, I would have to consider other alternatives, including possible dismissal of the action for lack of prosecution. For now, however, I am satisfied that plaintiff's separation from his legal materials was temporary and that he has not shown that he is not being prevented from litigating this action. Therefore, he is not entitled to emergency injunctive relief.

ORDER

IT IS ORDERED that the stay imposed on October 10, 2007 is lifted and that

plaintiff Kenneth Awe's motion for emergency injunctive relief is DENIED in its entirety.

Entered this 19th day of October, 2007.

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