

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

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ROGER KUBSCH,

Petitioner,

v.

DOUG BELLILE,

Respondent.

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ORDER

07-C-419-C

Judgment of dismissal was entered on August 6, 2007, after I found that petitioner's constitutional rights had not been infringed when respondent threatened to transfer him to the Wisconsin Resource Center if he failed to take financial responsibility for the damage to property he caused when he lost his temper. Now plaintiff has filed a letter postmarked August 13, 2007 and addressed "to whom it may concern," which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. In his motion, petitioner argues that my conclusion that respondent's threat did not rise to the level of a constitutional violation was in error because the legal precedent upon which I relied was established in cases involving prisoners and not involuntarily confined patients like himself.

The purpose of a Rule 59 motion is to bring to the court's attention newly discovered

evidence or a manifest error of law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). If the motion is timely, which petitioner's motion is, the movant must "clearly establish" his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001). A timely motion filed pursuant to Fed. R. Civ. P. 59 tolls the time for taking an appeal.

I do not agree with petitioner that I erred in concluding that the "verbal threat" he suffered rises to the level of a constitutional violation. Whether in the prison context or any other context, the rationale is the same. A verbal threat such as the one to which petitioner alleges he was subjected is incapable of causing an injury of sufficient magnitude so as to infringe any right guaranteed under the constitution. See Shabazz v. Cole, 69 F. Supp. 2d 177, 199-201 (D. Mass. 1999) (verbal harassment not violation of Fourteenth Amendment substantive due process), cited with approval in DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000).

Petitioner suggests that as a patient, he is entitled to a "humane psychological and physical environment" under Wis. Stats. § 51.61 and to be free of "abuse, neglect and ill-treatment," Wis. Stat. § 940.26 and "threats," Wis. Stat. § 940.42. Even assuming that the statement respondent made to petitioner qualifies as a statement violating one of these statutes, the violation of petitioner's rights under state law may be litigated in state court. Violations of state law, standing alone as they would be in this lawsuit, are insufficient to

invoke the jurisdiction of this court where, as here, the parties are citizens of the state.

ORDER

IT IS ORDERED that petitioner's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment entered in this action on August 6, 2007, is DENIED.

Entered this 17th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge