

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

JOSEPH F. JILES,

Plaintiff,

ORDER

v.

08-cv-464-slc

MARTHA BREEN, SARAH COOPER, WILLIAM
POLLARD, PETE ERICKSEN, STEVEN
SCHMIDT, TODD HAMILTON, MARK
BAENEN and MARK LIMONICK,

Defendants,

On August 29, 2008, plaintiff was granted leave to proceed *in forma pauperis* in this case on his claim that the defendants violated his Eighth Amendment rights for two weeks in August of 2007 when they deprived him of adequate clothes, a mattress, soap, toothbrush and all other hygiene items and required him to sleep on a concrete slab in front of a cool air vent. In addition, plaintiff was allowed to proceed on a claim that the defendants deprived him of his Fourteenth Amendment procedural due process rights when they placed him on a behavior modification plan without a hearing. The parties have consented to my jurisdiction. However, shortly after I held a preliminary pretrial conference in the case, plaintiff moved to dismiss the case voluntarily. That request was granted on December 1, 2008, and a judgment of dismissal was entered without prejudice and without costs.

Almost two months later, on January 26, 2009, plaintiff filed a motion to reopen the case and to appoint counsel to represent him. In an order dated February 4, 2009, I denied plaintiff's motion for appointment of counsel. In addition, I stayed a decision whether to allow plaintiff

to reopen the case, because it appeared from his arguments that he may have conditioned the request on a mistaken belief that I would appoint counsel for him. I directed him to advise the court in writing no later than February 17, 2009, whether he was prepared to prosecute this case on his own. Now, both plaintiff and defendants have responded to the February 4, 2009 order.

Plaintiff says that he will prosecute his case diligently, although he continues to have reservations about his ability to do a good job of it on his own. Defendants say they would prefer that the court require plaintiff to file a new lawsuit rather than reopen this one. They claim to be unclear about “what specific allegations plaintiff seeks to reinstate and whether or not they are mooted by subsequent events.” Defendants appear to believe that the only issue in this case was whether plaintiff was subjected to a behavior modification plan that violated his constitutional rights and that because plaintiff is no longer on that plan, the case should remain closed.

Defendants misunderstand the nature of this lawsuit. There are two claims. One challenges the conditions of plaintiff’s confinement for a two-week period as violating the Eighth Amendment prohibition against cruel and unusual punishment and the other challenges plaintiff’s placement in a behavior modification program without procedural due process. In his complaint, plaintiff asks for money damages should he prove his claims. He has not asked for any kind of injunctive relief. Therefore, it is perplexing how defendants can argue that his case has been mooted.

The August 29, 2008 order entered in this case sets out in detail the basis for plaintiff’s claims and the basis for the decision to allow him to proceed. With plaintiff’s confirmation that

he will prosecute the case diligently despite the fact that he will not have the help of a lawyer,
I am persuaded that the case should be reopened.

ORDER

IT IS ORDERED that the judgment of dismissal without prejudice and without costs entered herein on December 1, 2008 is VACATED.

Further, IT IS ORDERED that the stay on plaintiff's motion to reopen this case is LIFTED and the motion to reopen is GRANTED. The clerk of court is requested to set a scheduling conference so that a new date may be set for trial and new deadlines may be set to move the case to resolution.

Entered this 4th day of March, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge