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

JONATHAN L. LIEBZEIT,

Plaintiff,

v.

MICHAEL THURMER and SAM APPAU,

Defendants.

ORDER

10-cv-170-slc

Plaintiff Jonathan Liebzeit is proceeding on claims that defendants Michael Thurmer and Sam Appau violated his rights under the free exercise clause by denying his requests to: (1) engage in group religious exercise with other Odinists; and (2) possess a number of items associated with his religion. Plaintiff has filed a motion for leave to amend his complaint to add claims for injunctive relief against officials at the Wisconsin Department of Corrections. Dkt. 89. I am denying plaintiff's motion.

We have been down this road before many times. Since the beginning of this case, plaintiff has been attempting to assert claims for injunctive relief and each time this court has told plaintiff that his claims are not ripe because plaintiff no longer is housed at the same institution where defendants denied his religious requests. Dkt. 33, 40, 46, 47, 59 and 67. Defendants Thurmer and Appau are officials at the Waupun Correctional Institution who denied plaintiff's requests while he was housed there. Plaintiff now is housed at the New Lisbon Correctional Institution and he does not allege that he has repeated his requests to officials at his new institution.

In one of the several orders this court has issued on this matter, Judge Crabb wrote the following:

Plaintiff does not challenge the conclusion that he cannot obtain injunctive relief against officials at his previous prison (where he made his requests for religious accommodation) because they no longer have authority to grant that relief with respect to plaintiff. In addition, he does not challenge the conclusion that he cannot seek injunctive relief against officials at the New Lisbon prison. Instead, plaintiff seems to believe that it would be appropriate to issue a statewide injunction against officials at the Department of Corrections, but I disagree for two reasons. First, plaintiff has not identified any policies that prevent individual wardens from allowing particular groups to congregate or allowing individual prisoners to possess certain objects, so he cannot argue successfully that any policy of the department is substantially burdening his religious exercise. It may be that officials at plaintiff's former prison relied on the department's policies regarding religious "umbrella groups" and religious property, but that does not mean that the warden's or chaplain's decisions can be imputed to the department. As explained in previous orders, the policy on umbrella groups sets forth the department's view of the major religious groups in Wisconsin prisons, but it does not prohibit officials at particular prisons from allowing other groups to meet. The religious property chart sets forth the religious property that prisoners are presumptively allowed, but it does not establish a limit. Thus, if the warden or chaplain cited these policies in denying plaintiff's requests, that is a decision of the warden or chaplain, not the department.

Second, even if department policies did prohibit each of plaintiff's requests, this would not mean he would be entitled to an injunction before he seeks relief from New Lisbon prison officials. "[A] plaintiff must show that a favorable decision will likely, not just speculatively, relieve [his] injury." *Sierra Club v. Franklin County Power of Illinois, LLC*, 546 F.3d 918, 927-28 (7th Cir. 2008). For the purpose of his claims for injunctive relief, plaintiff's injuries are that he is unable to engage in group worship and possess certain religious items. However, declaring department policies to be unlawful could not redress those injuries. That is, even if the department were enjoined from enforcing department policies, plaintiff would still need to obtain permission to engage in group worship or possess religious items from officials at the New Lisbon prison, who might have different reasons than the department, reasons specific to that prison, for denying plaintiff's requests. Thus, before plaintiff would be entitled to an injunction, he would have to file a second lawsuit if New Lisbon prison officials did not

> agree to his demands. Accordingly, I adhere to my conclusion that plaintiff may not obtain an injunction under RLUIPA or the free exercise clause on his claims that defendants are prohibiting him from engaging in group worship and possessing certain religious items. Before plaintiff may seek relief in court on this claim, he must request relief from the New Lisbon prison officials.
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> In the alternative, plaintiff asks for leave to his amend his complaint to include new allegations about the department's policies. Plaintiff has had multiple opportunities to clarify his allegations. The problem is not that his allegations are unclear or incomplete, but that he has failed to seek relief from the officials responsible for granting that relief. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994) ("When a prison inmate seeks injunctive relief, a court need not ignore the inmate's failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them."). Thus, it would be futile for plaintiff to amend his complaint on this issue. *Bethany Pharmacal Co. v. QVC, Inc.*, 241 F.3d 854, 861 (7th Cir. 2001) (court may deny leave to amend complaint if doing so would be futile).

Dkt. #59 at 1-4.

Nothing in plaintiff's latest motion undermines any of these conclusions. Although plaintiff insists that discovery has shown that defendants do not have authority to change DOC policies, that observation is irrelevant. This court has never suggested that a prison warden may change DOC policy; what the court has held is that none of plaintiff's allegations suggest that the policies he cites would *prohibit* officials at NLCI from accommodating plaintiff's religious beliefs. Plaintiff still has not shown that his requests for injunctive relief are ripe.

In his motion plaintiff includes a request to add Rick Raemisch, former DOC Secretary, to his claim for damages under the free exercise clause. Plaintiff argues that Raemisch is an appropriate defendant because he affirmed the decision of the examiner who denied plaintiff's

grievance. This is another issue that this court already has considered and rejected. In the order screening plaintiff's complaint, the court stated:

> Defendant Raemisch did not participate in th[e] decision [to deny plaintiff's requests] or even approve it. Even with respect to the grievance plaintiff filed, defendant Raemisch did not personally deny it. Rather, a staff member named Amy Smith reviewed the grievance and denied it on behalf of Raemisch. That is not sufficient to hold Raemisch liable under § 1983. *Burks v. Raemisch*, 555 F.3d 592, 593-94 (7th Cir. 2009) ("Liability depends on each defendant's knowledge and actions, not on the knowledge or actions of persons they supervise.").

Dkt. 47, at 10. Plaintiff gives no reason for reconsidering that decision.

Finally, plaintiff has filed an untitled document in which he raises two issues. (*See* Dkt. 102). First, he objects to defendants' brief in opposition to his motion for leave to amend his complaint because it is untimely. However, even if I agreed with plaintiff that defendants' response was late and should be ignored, this would not mean that plaintiff is entitled to amend his complaint. Issues such as ripeness and the availability of injunctive relief may be raised by the court without regard to any arguments from defendants. *Farmer*, 511 U.S. at 847; *Wisconsin Cent., Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008) ("This Court, however, is obligated to consider [its] jurisdiction at any stage of the proceedings, and ripeness, when it implicates the possibility of this Court issuing an advisory opinion, is a question of subject matter jurisdiction under the case-or-controversy requirement.").

Second, plaintiff says he is confused because Judge Crabb signed the last order even though the parties have consented to my jurisdiction over this case. That was an oversight by the court, but it makes no difference because the only point of that order was to give defendants additional time to respond to plaintiff's motion for leave to amend his complaint. Dkt. 99. As

I just stated, I would have denied plaintiff's motion regardless of defendants' position on the matter.

ORDER

It is ORDERED that

(1) Plaintiff Jonathan Liebzeit's motion for leave to amend his complaint, dkt. 89, is DENIED.

(2) Not later than May 6, 2011, plaintiff may file and serve his opposition materials to defendants' motion for summary judgment; not later than May 16, 2011, defendants may file their reply.

Entered this 4th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge