IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TIMOTHY FRANCIS RIPP,

OPINION and ORDER

Plaintiff,

10-cv-259-bbc

v.

ROBYN BRADLEY,

Defendant.

- -

This is a prisoner civil rights case brought pursuant to 42 U.S.C § 1983. Plaintiff Timothy Ripp contends that defendant Robyn Bradley denied him access to the courts when she allegedly refused to schedule phone conferences for plaintiff's small claims action. Now before the court is defendant's motion for summary judgment, which will be granted. The undisputed facts show that plaintiff dismissed his small claims action on his own and no reasonable jury could find that defendant's actions caused the dismissal. Moreover, plaintiff was able to litigate the claim he dismissed in a later action, which he lost on the merits.

Also before the court are plaintiff's motion for a three-day extension of time for filing his summary judgment materials and a motion to "rebuke" defendant's motion for summary judgment, which is simply a request that the court deny the motion for summary judgment

on the merits. The motion for an extension of time will be granted and plaintiff's materials accepted. The motion to rebuke will be denied.

From the parties' proposed findings of fact and the record, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Timothy Ripp is an inmate at the Columbia Correctional Institution, which is a maximum security prison in Portage, Wisconsin. Defendant Robyn Bradley is employed as a social worker at that prison.

On November 28, 2007, plaintiff filed a small claims action against his sister, Mary Lou Norton, in the Circuit Court for Door County, alleging that his sister threw away his property when his parents moved out of their house. The court scheduled a hearing for January 8, 2008, but then rescheduled the hearing to January 15, 2008 at Mary Lou Norton's request. The notice of rescheduling included a number that plaintiff could call to appear by telephone.

At the Columbia Correctional Institution, most court conference calls are initiated by the court. Typically, the court will send a formal notification of the hearing to the prison and the call is scheduled in the program services unit. If the court refuses to place the call, the conference call will be scheduled on the inmate's housing unit by the social worker.

These calls are charged to the inmate or paid for by a legal loan.

On the morning of January 15, 2008, plaintiff approached defendant and showed her the notice of the hearing scheduled for that day. (The parties dispute whether plaintiff had already told defendant on January 3, 2008 that he needed the call set up.) Defendant checked with program services and learned that the prison had not received formal notice of the hearing from the court and no telephone call had been scheduled. Nonetheless, plaintiff was able to appear by telephone for his scheduling conference. (The parties dispute whether defendant placed a call to the court or the court called the prison.)

During the telephone hearing, plaintiff told the judge he wanted to voluntarily dismiss his case and the judge dismissed the case without prejudice. (Plaintiff stated in his affidavit but did not propose as a fact that plaintiff decided to dismiss the case after the judge told him that for future conferences the court would not call the prison but instead plaintiff would have to call the court. According to plaintiff, he dismissed his case because he did not think defendant would arrange future conference calls after she told him that she would not make "any arrangements for [him].")

On June 10, 2009, plaintiff filed a second small claims action in the Circuit Court for Door County, alleging that his sister threw away his property when his parents moved out of their house, at the behest of his parents. He included his mother, Janice Ripp, as a defendant in that case. The court dismissed that case on the merits, informing plaintiff that

it was not his family's responsibility to store his property. Plaintiff filed a motion for reconsideration in that case but the motion was denied.

OPINION

Prisoners have a constitutional right to reasonable access to the courts and prison officials bear an affirmative duty to provide inmates such access. E.g., Campbell v. Miller 787 F.2d 217, 225-26 (7th Cir. 1986). In Christopher v. Harbury, 536 U.S. 403, 413 (2002), the United States Supreme Court described two types of denial of access to courts claims. The first category includes claims in which "systemic official action" has the effect of "presently denying an opportunity to litigate for a class of potential plaintiffs." The remedy in this category would be to "place the plaintiff in a position to pursue a separate claim once the frustrating condition has been removed." Id.

The second category of denial of access to courts claims includes "backwards-looking" claims, in which the defendant's acts allegedly "caused the loss or inadequate settlement of a meritorious case," "the loss of an opportunity to sue" or "the loss of an opportunity to seek some particular order of relief." Id. at 414. Plaintiff's case involves such a backwards-looking claim because he contends that defendant caused him to lose his case. To prevail on his claim, plaintiff must show that defendant "hindered his . . . efforts to pursue a nonfrivolous legal claim and that consequently [he] suffered some actual concrete injury."

May v. Sheahan, 226 F.3d 876, 883 (7th Cir. 2000) (citing Lewis v. Casey, 518 U.S. 343, 350-54 (1996)).

Plaintiff's theory is that defendant's failure to schedule his telephone conference with the court led to his loss of his small claims action. According to plaintiff, if defendant had been willing to make arrangements for plaintiff to call the court for the January 15, 2007 hearing, he would not have decided to voluntarily dismiss his first small claims case against his sister and then, perhaps his sister, Mary Lou Norton, might not have shown up for his first trial and he could have obtained a default judgment.

Plaintiff's theory is flawed for a number of reasons. First, it was *plaintiff* who ultimately decided to dismiss his first action. Even if plaintiff is correct in believing that defendant was unwilling to arrange any *future* calls for him (a bold assumption because she never told him this or even suggested it), he was not required to dismiss his case. Instead, he could have proceeded with the case until he received notice that he would need to appear by telephone again, at which time he could have addressed the problem with the court or the prison or both. Instead, plaintiff shut down his case early. He cannot blame defendant for his hasty decision to voluntarily dismiss his case, even if he was worried that she might impede his case in the future. Cf., Pratt v. Tarr, 464 F.3d 730, 732 (7th Cir. 2006) (plaintiff must show that "as a result of the [defendant's] action the plaintiff had lost a case or suffered some other legal setback"); Johnson v. Barczak, 338 F.3d 771, 772-73 (7th Cir. 2003)

(same).

Second, and more important, plaintiff cannot show that his voluntary dismissal did any harm to his claim. His original action was dismissed without prejudice and he was able to litigate the same claim fully when he brought a new small claims action and ultimately lost on the merits of that case. Thus, in the end it was not defendant's potential interference that lost plaintiff's case, it was the merits of the case itself. Although plaintiff contends that he lost the chance to win a default judgment, that point is irrelevant. The right plaintiff contends has been violated is the right of *access* to the courts, not the right to a windfall victory in court. Plaintiff had a full chance to litigate his case and lost it on the merits. The right of access to the courts promises nothing more than a chance to litigate a meritorious claim without interference. Cf. Bruscino v. Carlson, 854 F.2d 162, 167 (7th Cir. 1988) (access to courts claim dismissed for failure to show any prejudice where "[n]o one fell under the bar of a statute of limitations, no one failed to make a timely filing, no one was denied legal assistance to which he was entitled, no one lost a case he should or could have won"); Martin v. Davies, 917 F.2d 336, 340 (7th Cir. 1990) (actual injury such as missed court dates or inability to make a timely filing must be shown to avoid summary judgment).

ORDER

IT IS ORDERED that

1. Plaintiff Timothy Ripp's motion for a three-day extension of time to file summary judgment materials, dkt. # 35, is GRANTED.

2. Defendant Robyn Bradley's motion for summary judgment, dkt. #22, is GRANTED.

3. Plaintiff's motion to rebuke defendant's motion for summary judgment, dkt. #36, is DENIED.

4. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 8th day of July, 2011.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge