

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

TIMOTHY FRANCIS RIPP,

Plaintiff,

v.

AMY SMITH, ISMAEL OZANNE,
MARC CLEMENTS, ALICE ROGERS,
AMY MILLNARD, DAVID LIPINSKI,
WELCOME ROSE, TOM GOZINSKE,
and ROBYN BRADLEY,

Defendants.

OPINION and ORDER

10-cv-259-bbc

This is a prisoner civil rights case brought under 42 U.S.C. § 1983. Plaintiff Timothy Francis Ripp contends that defendants denied him access to the courts by refusing to provide him a legal loan to mail subpoenas and by refusing to set up conference calls with the court. Plaintiff has requested leave to proceed without prepayment of fees and has paid the required initial partial filing fee.

Plaintiff will be allowed to proceed on his claim that defendant Robyn Bradley denied him access to the courts by refusing to set up conference calls. Although plaintiff asserts this claim against “defendants” generally, the allegations support a claim against Bradley only. As for plaintiff’s claim that defendants denied his access to the courts by refusing to provide

a legal loan, that claim must be dismissed for its failure to state a claim upon which relief may be granted.

From plaintiff's complaint, I draw the following allegations of fact.

ALLEGATIONS OF FACT

On November 28, 2007, plaintiff Timothy Francis Ripp filed a small claims action against his sister, Mary Lu Norton, in the Circuit Court for Door County. (Although plaintiff says the last three digits are "587," he attaches a printout listing them as "578.") On December 5, 2007, plaintiff wrote a letter to the judge for the case, asking whether plaintiff would have to appear in person or by phone for pretrial hearings and trial. The court's response was that he would have to file a motion if he wanted to appear in person for any particular hearing or trial.

On January 3, 2008, plaintiff asked his social worker, defendant Robyn Bradley, whether she received an "interview/information request" he had sent to her. She said she had not because she had been on vacation. Plaintiff explained that he had questions about how to make arrangements for conference calls for pretrial hearings and staff in the business office had told him that it was defendant Bradley's job to set up such calls. Defendant Bradley told plaintiff that "I am not going to make any arrangements for you to make conference calls."

On January 15, 2008, defendant Bradley took plaintiff to the conference room and

told him that the judge for his small claims case was on the phone. The judge told him that “this is the last time the court will call you. From now on you have to call the court.” Plaintiff told the judge that his social worker “is refusing to do her job and set up conference calls, so I am asking the court to let me be in person at all other prehearings and the trial.” The judge denied plaintiff’s request to appear in person, so plaintiff asked, “What else can I do?” The judge said, “I have no choice but to dismiss your small claims action.”

On June 4, 2009, plaintiff filed a separate small claims action against his mother for “letting his sister [Norton] throw out all of [his] property.” Plaintiff’s parents had told plaintiff that Norton had thrown out plaintiff’s stereo and other equipment at their request, and plaintiff wanted to mail subpoenas to potential witnesses by certified mail with a return receipt. In particular, plaintiff wanted to subpoena two witnesses who he believed might have his property now to ask about that and one witness who was in the room when plaintiff’s parents told him that his property had been thrown out.

Plaintiff asked for a legal loan to cover the cost of mailing the subpoenas to the witnesses but defendant Alice Rogers denied the request for a legal loan, stating that legal loans do not apply to mail not sent to a lawyer or the courts. On July 20, 2009, the small claims trial was held and plaintiff lost his case.

OPINION

Under the constitution, prisoners have a right to “meaningful access to the courts.”

Bounds v. Smith, 430 U.S. 817, 821-22 (1977). A claim for access to the courts may be forward-looking, for a lawsuit yet to be litigated, or backward-looking, for a lawsuit or a chance to sue that has already been lost. Christopher v. Harbury, 536 U.S. 403, 413-14 (2002). For backward-looking claims, a plaintiff must show that the defendants caused the plaintiff to lose a meritorious claim or a chance to sue on a meritorious claim. Id. at 414. To state a claim for backward-looking denial of access to the courts, a plaintiff must at least describe the underlying claim and explain how it has been lost or impeded. Id. at 415-16.

In this case, plaintiff identifies two access to the courts claims. First, he contends that defendants interfered with his ability to litigate his first small claims case by refusing to set up conference calls with the court. The facts alleged support the notion that defendant Bradley did just that, refusing to “make any arrangements for [plaintiff] to make conference calls.” After this, the judge told him that he would have to dismiss plaintiff’s small claim case. It is unclear exactly why the case was dismissed or whether Bradley knew that plaintiff might face dismissal for failing to call in. Nonetheless, the allegations allow an inference that the judge dismissed plaintiff’s case because plaintiff could not call in for hearings and that Bradley created that problem by refusing to set up calls in the first place, well aware that plaintiff needed to have those calls placed because he asked her. At this stage, these allegations suffice, so plaintiff may proceed on his claim against defendant Bradley.

However, plaintiff may not assert this claim against any of the other defendants. The allegations do not suggest that any other defendant was personally involved in Bradley’s

refusal to set up conference calls. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995) (liability under § 1983 reaches only to defendants personally involved in constitutional violation). Although plaintiff describes the general work each defendant performs, none of this can support a claim that any defendant was personally involved in this particular alleged constitutional violation.

Plaintiff's second claim relates to his second small claims case. Plaintiff contends that defendants denied him access to the courts by refusing to provide a legal loan for subpoenas. The problem is that plaintiff does not explain how his inability to mail subpoenas led to his losing the case. As explained above, to state a claim, plaintiff must explain how defendants are alleged to have caused the loss or inadequate resolution of a meritorious case. Christopher v. Harbury, 536 U.S. at 414. Plaintiff states in conclusory fashion that the case was "dismissed because of the actions of the defendants," but does not explain the connection between the dismissal and the defendants' actions. At most, it is possible to infer that the three witnesses identified were not present and did not offer the testimony plaintiff sought.

There is no suggestion that the missing testimony lost the case for plaintiff or might have affected the judge's ruling because plaintiff does not mention the rationale of the judge at all. This silence is fatal to plaintiff's claim. I note, however, that the silence may be because plaintiff knows the testimony *did not* matter. Online court records maintained at the Wisconsin Circuit Court Access Program, <http://www.wcca.wicourts.gov>, for the small

claims case plaintiff identifies (Door County Case No. 2009SC000297) suggests that the judge dismissed the case on entirely different grounds. In particular, the records include an “Event” description for the July 20, 2009 court trial that includes the following text:

Court tells Plt. his case is dismissed. He needed to make arrangements for his property before he was sent to prison. His family was not obligated to store or keep it for him. This matter is dismissed.

If the judge decided that plaintiff’s right to his property was lost because of his own negligence, then it does not matter whether plaintiff could have brought witnesses to talk about whether certain family members had the property or had thrown it out. Because the allegations fail to suggest that any defendant caused him to lose his second small claims case by denying his request for a legal loan to mail subpoenas, plaintiff’s second access to the courts claim will be dismissed for his failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that

1. Plaintiff Timothy Francis Ripp’s request for leave to proceed is GRANTED on his claim that defendant Robyn Bradley denied him access to the courts by refusing to arrange conference calls to the small claims court.

2. The following claims of plaintiff’s are DISMISSED with prejudice for failure to state a claim upon which relief may be granted:

a. plaintiff's claim that defendants Amy Smith, Ismael Ozanne, Marc Clements, Alice Rogers, Amy Millnard, David Lipinski, Welcome Rose and Tom Gozinske denied him access to the courts by refusing to arrange conference calls to the small claims court; and

b. plaintiff's claim that all defendants denied him access to the courts by denying his request for a legal loan for mailing subpoenas that he wanted to use during a second small claims case.

3. With respect to defendants Amy Smith, Ismael Ozanne, Marc Clements, Alice Rogers, Amy Millnard, David Lipinski, Welcome Rose and Tom Gozinske, plaintiff's complaint is DISMISSED.

4. For the remainder of this lawsuit, plaintiff must send defendant Bradley a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to defendant's attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today

to the Attorney General for service on the state defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint for the defendant on whose behalf it accepts service.

7. Because I have dismissed a portion of plaintiff's complaint for one of the reasons listed in 28 U.S.C. § 1915(g), a strike will be recorded against plaintiff.

8. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at the Columbia Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 30th day of July, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge