

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

MARKUS GRANSBERRY,

Plaintiff,

v.

C/O GOLDSMITH, C/O GRAFF
and SGT. FRIEND,

Defendants.

ORDER

10-cv-449-bbc

In this civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983, plaintiff Markus Gransberry contends that defendants C/O Goldsmith, C/O Graff and Sergeant Friend are violating his right to free speech under the First Amendment by retaliating against him because he filed a lawsuit against defendant Friend. On September 13, 2010, I granted plaintiff leave to proceed on his claim that defendant Friend retaliated against him by refusing to provide him dry clothes. I dismissed several of plaintiff's other proposed claims for failure to state a claim upon which relief may be granted. Also, I dismissed plaintiff's retaliation claims against defendants Goldsmith and Graff without prejudice for violation of Fed. R. Civ. P. 8 and gave plaintiff an opportunity to supplement his complaint with more information about these defendants. Plaintiff has filed a supplement to the complaint, dkt. #21.

After reviewing plaintiff's complaint and supplement, I conclude that plaintiff may proceed on his claim that defendant Goldsmith retaliated against him. However, plaintiff may not proceed on his claim against defendant Graff because his supplement makes no mention of Graff at all. Accordingly, I will not discuss plaintiff's claim against Graff further and Graff will be dismissed from this case.

DISCUSSION

In the September 13, 2010 order, I told plaintiff that he must plead three elements in order to state a claim for retaliation against defendant Goldsmith. He must (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was one of the reasons defendants took the action they did against him. Bridges v. Gilbert, 557 F.3d 541, 556 (7th Cir. 2009) (citing Woodruff v. Mason, 542 F.3d 545, 551 (7th Cir. 2008)); Hoskins v. Lenear, 395 F.3d 372, 375 (7th Cir. 2005). I found that plaintiff satisfied the first element of a retaliation claim because his filing of a lawsuit against defendant Friend is a constitutionally protected activity. In addition, plaintiff alleged that defendant Goldsmith has taken multiple adverse actions against plaintiff, including breaking his glasses, hiding medication under his mattress and directing a racial slur toward him. I can infer that Goldsmith's actions would deter a person of ordinary firmness from

engaging in protected activity in the future.

However, I told plaintiff that his complaint did not address the third element of his retaliation claim because he did not allege that defendant Goldsmith knew of plaintiff's lawsuit against defendant Friend and he did not explain why the lawsuit would cause Goldsmith to retaliate against plaintiff. In his supplement, plaintiff alleges that Friend is Goldsmith's superior officer, that Goldsmith has been aware of plaintiff's lawsuit against Friend since the time plaintiff filed it in December 2009, that Goldsmith started mistreating plaintiff in December 2009 and that Goldsmith has acted as an agent of Friend in retaliating against plaintiff. Although it is a close call because many of plaintiff's allegations are conclusory, plaintiff's allegations are sufficient to plead a claim for retaliation against defendant Goldsmith at this stage. Given the temporal proximity between plaintiff's lawsuit against Friend and Goldsmith's negative treatment of plaintiff, as well as the allegation that Goldsmith is acting on behalf of Friend, I can infer that Goldsmith's adverse actions against plaintiff were motivated in part by plaintiff's lawsuit against Friend. Plaintiff's complaint provides notice to Goldsmith of the protected activity at issue, of the alleged adverse acts taken by Goldsmith and why plaintiff believes Goldsmith's mistreatment of plaintiff was motivated by plaintiff's protected activity. Thus, defendant has notice of plaintiff's claim and will be able to respond. Swanson v. Citibank, N.A., 614 F.3d 400, 404-06 (7th Cir. 2010) (complaint need only provide defendant fair notice of what claim is and grounds upon which it rests).

ORDER

IT IS ORDERED that

1. Plaintiff Marcus Gransberry is GRANTED leave to proceed on his claims that defendants Sergeant Friend and C/O Goldsmith retaliated against him because he filed a lawsuit against Friend.

2. Plaintiff is DENIED leave to proceed on his claim that defendant C/O Graff retaliated against him by refusing to provide him dry clothes because he filed a lawsuit against Friend.

3. Plaintiff's complaint is DISMISSED as to defendant Graff.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint, supplement to his complaint, the September 13 order, dkt. #17, and this order are being sent today to the Attorney General for service on the state defendants. 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 defendants on whose behalf it accepts service.

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

6. 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.

7. 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 officials at the Columbia Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 19th day of October, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge