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

CHRISTOPHER M. SANDERS,

Plaintiff,

v.

MS. LUNDMARK,

Defendant.

ORDER

11-cv-206-slc

Plaintiff Christopher Sanders is proceeding on a claim that defendant Sharalee Lundmark violated his rights under the First Amendment by threatening him and issuing a false conduct report against him in retaliation for complaining about the inmate complaint system and her treatment of him. Defendant has filed a motion for summary judgment and a motion to stay pretrial proceedings pending resolution of the summary judgment motion. In addition, plaintiff has filed a host of motions on preliminary matters. After considering the parties' submissions, I will deny plaintiff's various motions and grant defendant's motion for summary judgment.

PRELIMINARY MOTIONS

Plaintiff has filed several motions, including another motion for appointment of counsel, dkt. 74, and a motion for "court assistance," dkt. 89. In these motions, plaintiff states that he "cannot look up case law," that "things have gotten too complicated" to litigate by himself and that he needs help in gathering statements from those he claims can corroborate his story about what happened. However, the court is capable of researching case law and other authorities to determine whether defendant's motion for summary judgment should be granted, so there is no reason to appoint counsel for legal research purposes. Moreover, plaintiff does not need corroboration for his story, because I must accept his proposed findings of fact as true at the

summary judgment phase. Because plaintiff has failed to show any reason to appoint counsel for him, I will deny these motions.

Plaintiff also brings a motion to reconsider the portion of the May 11, 2012 screening order denying him leave to proceed on claims against defendants Captain Chada and Warden Wallace, dkt. 90, as well as a motion to amend his complaint "for additional damages, and additional defendants," dkt. 95. Plaintiff does not provide any developed argument for reconsidering the screening order, and it is far too late for plaintiff to amend his complaint. *E.g., Bethany Pharmacal Co. v. QVC, Inc.*, 241 F.3d 854, 861-62 (7th Cir. 2001) (court did not err in denying motion to amend complaint when defendant had already filed motion for summary judgment). Accordingly, I will deny these motions.

Plaintiff has filed a motion titled "Request for Change of Venue/Change of Judge," dkt. 95, arguing that the clerk of court is assisting defendant by "delaying, hindering, or denying plaintiff's documents (while plaintiff has been unable to get the prejudiced court to help.)" As I have already discussed in the court's January 13, 2012 order in this case, plaintiff's assertions of malfeasance or bias are completely unfounded; plaintiff does not point to any documents he has attempted to file with the clerk's office that have been improperly rejected. Plaintiff appears to take issue with the handling of his unsigned summary judgment responses, but the clerk's office properly returned them to plaintiff so that he could sign them as required by Fed. R. Civ. P. 11. The court has received plaintiff's signed copies of these documents and will consider them in this opinion. Plaintiff does not raise any intelligible complaint about me, so there is no reason to consider recusal. Therefore, plaintiff's motion will be denied.

Finally, plaintiff has filed two "requests for surreply," dkt. 102 & 103, in which he rehashes the same issues that I have rejected above with regard to his motion for "Change of Venue/Change of Judge." To the extent that plaintiff seeks to file a surreply (a document generally disfavored in this court because there is usually no need for the responding party to get another "bite at the apple"), he does not provide any explanation for why a surreply is necessary. Therefore, I will deny the motion.

With the resolution of these preliminary matters, I turn to defendant's motion for summary judgment. From the parties' proposed findings of fact and granting all inferences in favor of plaintiff, I find the following facts to be undisputed for the purpose of deciding the motion for summary judgment, unless otherwise noted:

FACTS

Plaintiff Christopher Sanders, an inmate incarcerated by the Wisconsin Department of Corrections, was transferred to the Chippewa Valley Correctional Treatment Facility in the fall of 2010. Defendant Sharalee Lundmark is an inmate complaint examiner at the facility.

At the time of his transfer, plaintiff was attempting to file numerous grievances against staff at his previous prison. Plaintiff was instructed to submit his grievances to defendant, two per week. Defendant rejected at least some of these grievances. Plaintiff planned to appeal these rejections. On the morning of December 11, 2010, plaintiff was looking for DOC-405 (appeal of a dismissed inmate grievance) and DOC-2182 (appeal of a rejected inmate grievance) forms. Plaintiff contacted Officer Smith, who said that "they were all out" of forms (plaintiff's testimony is inconsistent; he also states that there were two DOC-405 forms available. Also, it

is unclear why plaintiff needed the DOC-45 forms to appeal rejections of his grievances rather than dismissals, but it is undisputed that plaintiff sought both types of forms).

Plaintiff signed out of his floor, went to the basement for recreation during his scheduled time and spoke with Officer Sadlecek, who stated that he did not have any of the relevant forms, but told plaintiff to speak with Sergeant Gadle, who was on the second floor. Plaintiff went to the second floor to see Gadle, who took him to the officer station. Gadle stated that none of the officers on the second floor had copies of the forms. Gadle then called the third floor and discovered that "the building was empty" (I understand this statement to mean that there were no forms in the entire building). Gadle told plaintiff to write to defendant because she was the institution complaint examiner. Gadle made plaintiff one photocopy of each form from blank forms plaintiff had saved in case of emergency. Later that day, another officer and sergeant helped plaintiff get another copy of a DOC-2182 form by photocopying one.

The same day, plaintiff submitted an "Interview/Information Request" form to defendant, stating as follows:

> Please supply I.C.I. forms, DOC-2182, DOC 405 forms to the floors. All 3 inmate floors are empty, as of today.
>
> I will need 8 more DOC-405 forms, and probably as many DOC-2182 forms, for my complaints against Stanley. . . .

Defendant wrote back on December 13, 2010, stating:

> Forms are available at the officer's station—you need only ask appropriately. You should not be on other floors taking inventory this could result in a conduct report.

On December 14, 2010, plaintiff submitted another Interview/Information Request form to defendant, stating:

> I initially tried to ask appropriately at the officer's station for forms. When that didn't work, a higher ranking officer directed me to the 2nd Floor, where only some of the forms were there. The officers informed me that they were out everywhere. I did not go "to other floors taking inventory." I don't appreciate you implying that. I realize you are trying to scare me, or intimidate me, while I am seeking help. Please stop hindering me from seeking help against abusive staff.

Defendant contacted Correctional Sergeant Klawiter, who is the first-shift sergeant on the 4th floor, where plaintiff was residing at the time in question. He was the highest ranking officer on that floor. Klawitter stated that he did not instruct plaintiff to go to another floor. Correctional Sergeant Klawiter also confirmed that there were 15-20 of each of the forms on the fourth floor. (Plaintiff says that Klawiter was not working on December 11, 2010, and points out that Klawiter's assertion that there were plenty of forms seems to refer to several days after plaintiff inquired about them, which means that they could have been replenished.)

Defendant states that as a result of her conversation with Correctional Sergeant Klawiter, she concluded that plaintiff had lied to her when he told her that he had been instructed to go to other floors for grievance forms. (Generally, inmates are not allowed to go to floors of the institution on which they do not reside.) Defendant issued plaintiff a minor Adult Conduct Report #2091330 to plaintiff for violating Wis. Admin. Code §§ DOC 303.25, Disrespect, and 303.27, Lying. (Plaintiff states that defendant did not speak with "any of the 5 officers (and sergeant) that authorized [him] to leave [the fourth] floor," and that he was "signed out to rec

. . . so [he] wouldn't need authorization to leave his floor before speaking with Officer Sadlecek.") Plaintiff received a "reprimand only" disposition on the conduct report.

OPINION

I. Summary Judgment Standard

Summary judgment is proper where there is no showing of a genuine issue of material fact in the pleadings, depositions, answers to interrogatories, admissions and affidavits, and where the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "'A genuine issue of material fact arises only if sufficient evidence favoring the nonmoving party exists to permit a jury to return a verdict for that party.'" *Sides v. City of Champaign*, 496 F.3d 820, 826 (7th Cir. 2007) (quoting *Brummett v. Sinclair Broadcast Group, Inc.*, 414 F.3d 686, 692 (7th Cir. 2005)). In determining whether a genuine issue of material facts exists, the court must construe all facts in favor of the nonmoving party. *Squibb v. Memorial Medical Center*, 497 F.3d 775, 780 (7th Cir. 2007). Even so, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, he must come forward with enough evidence on each of the elements of his claim to show that a reasonable jury could find in his favor. *Borello v. Allison*, 446 F.3d 742, 748 (7th Cir. 2006); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986).

II. Retaliation

To prevail on a First Amendment retaliation claim, [plaintiff] must ultimately show that:

> (1) He engaged in activity protected by the First Amendment;
>
> (2) He suffered a deprivation that would likely deter First Amendment activity in the future; and
>
> (3) The First Amendment activity was 'at least a motivating factor' in [defendant's] decision to take the retaliatory action.

Bridges v. Gilbert, 557 F.3d 541, 555-56 (7th Cir. 2009) (citations omitted); *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005).

I understand plaintiff to be claiming that defendant threatened him and gave him a false conduct report in retaliation for his correspondence about the lack of available grievance forms. Based on the proposed findings of fact submitted by the parties, I conclude that defendant's motion for summary judgment must be granted.

First, no reasonable jury could conclude that plaintiff meets all three prongs of a retaliation claim regarding defendant's initial warning (which cannot reasonably be characterized as a threat). Defendant told plaintiff that he should not go to other floors without permission because he could be given a conduct report for this. This warning did not cause plaintiff to suffer any deprivation that would likely deter First Amendment activity in the future. Indeed, within three days of defendant's warning, plaintiff *wrote back*, stating that defendant was incorrect about him not having permission to leave his floor, and telling her not to scare or threaten him. It was plaintiff's *response* that led to the conduct report against him. Finally, neither the evidence nor reasonable inferences therefrom suggest that defendant acted with retaliatory motive by issuing this warning to plaintiff. In fact, one reasonable characterization

of defendant's warning was that she was trying to be helpful. From his response, it is obvious that plaintiff didn't read it that way.

Turning to the conduct report for lying issued against plaintiff as a result of defendant's response, I will assume for summary judgment purposes that the evidence establishes the first two prongs of a retaliation claim. However, no reasonable jury could find that the evidence establishes that defendant acted with retaliatory motive. Rather, the only reasonable inference that can be drawn from the evidence is that defendant actually believed that plaintiff had lied to her about having obtained permission to go to another floor. Plaintiff focuses on what he believes was the inadequacy of defendant's investigation of his complaints, stating that her choice to ask Sergeant Klawiter whether he gave permission to plaintiff to go to another floor shows that it was a "false" investigation. Plaintiff argues that if defendant was interested in conducting a "real" investigation, she would have talked to the various staff members from whom he had received permission. Plaintiff explains who these staff members were in his proposed findings to this court; but more critically to the retaliation claim, plaintiff did not include the names of these staff members in his complaints to the defendant. If plaintiff had done so and defendant had failed to check with these staff members, then his allegation of a sham investigation might have some traction. But there is no basis to hold defendant responsible for tracking down these unnamed staff members on her own.

There simply is no evidence indicating that defendant intentionally "sandbagged" her investigation in order to ensure that she would be able to write a retaliatory conduct report against plaintiff. Instead, the facts indicate that defendant contacted the highest ranking officer on the floor, who told her that had not given plaintiff permission to go to another floor, and that

there were 15-20 copies of the form plaintiff had been seeking on the floor. Perhaps Sergeant Klawiter should have checked with his underlings on the floor before responding to defendant's inquiry, but his failure to investigate further cannot be attributed to the defendant. Even if I were to deem *defendant's* investigation to be cursory, plaintiff does not explain how this shows that she acted with retaliatory motive in charging him with lying. Defendant avers that she gave plaintiff the conduct report because she believed that he lied, and plaintiff fails to adduce any evidence that shows—or even allows a reasonable inference—that defendant's averment is not true. Accordingly, summary judgment is appropriate on this claim. *Davis v. Carter*, 452 F.3d 686, 697 (7th Cir. 2006) ("when the evidence provides for only speculation or guessing, summary judgment is appropriate").

Plaintiff's claim on the disrespectfulness charge fares no better. In his second information request form, plaintiff wrote, "I realize you are trying to scare me, intimidate me while I am seeking help. Please stop hindering me from seeking help against abusive staff." Plaintiff argues that this was not disrespectful, but defendant was free to disagree. If plaintiff's language was obviously not disrespectful, perhaps that would be evidence of pretextual reasons for the charge. But plaintiff states as a fact that defendant is intentionally performing her job improperly for the purpose of hampering plaintiff's attempts to obtain relief from defendant's abusive colleagues. It's not a particularly robust accusation, especially in a prison setting, but accusing a staff member of intentional malfeasance reasonably could be viewed by the accused as disrespectful. The fact that one can imagine much worse disrespect does not prove that the defendant brought her charge as retaliation against plaintiff. Finally, I note that plaintiff has not adduced any other evidence suggesting that defendant acted with retaliatory motive. Because

plaintiff has not adduced any evidence raising the likelihood of retaliatory motive for the disrespectfulness charge beyond pure speculation, summary judgment must be granted on this claim as well.

Because I am granting defendant's motion for summary judgment, her motion to stay pretrial deadlines will be denied as moot.

ORDER

It is ORDERED that

1. Plaintiff Christopher Sanders's motion for appointment of counsel, dkt. 74; motion for "court assistance," dkt. 89; motion for reconsideration of the court's May 11, 2012 screening order, dkt. 90, motion to amend his complaint, dkt. 95; motion for "Change of Venue/Change of Judge," dkt. 95; and motions for leave to file a surreply, dkt. 102 & 103; are DENIED.

2. Defendant Sharalee Lundmark's motion for summary judgment, dkt. 69, is GRANTED.

3. Defendant's motion to stay pretrial deadlines, dkt. 104, is DENIED as moot.

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

Entered this 28th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge