

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

NATHAN GILLIS,

Plaintiff,

v.

MICHAEL MEISNER, ANTHONY ASHWORTH,
GARY HAMBLIN, CAPT. MORGAN and
JOHN DOES 1-5,

Defendants.

ORDER

11-cv-560-bbc

Plaintiff Nathan Gillis, a prisoner at the Columbia Correctional Institution, located in Portage, Wisconsin, has filed a proposed complaint and submitted the \$350 filing fee for this civil action. In his complaint, plaintiff alleges that prison staff blocked him from transferring money from his prison account to his family. Plaintiff has filed also a motion for preliminary injunctive relief.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In

addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). After reviewing the complaint, I conclude that plaintiff states a claim against defendant Anthony Ashworth for denying his disbursement requests in retaliation for filing a lawsuit against Ashworth, states due process claims against defendants Michael Meisner, Gary Hamblin and Captain Morgan for denying his disbursement requests and states Wisconsin breach of contract claims against Ashworth, Meisner, Hamblin and Morgan for violating a previous settlement agreement with the state. I conclude that plaintiff fails to state due process claims against Ashworth for denying his disbursement requests and against Meisner for creating an unwritten disbursement procedure for plaintiff. Finally, I will deny plaintiff's motion for preliminary injunctive relief as moot.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Nathan Gillis is a prisoner at the Columbia Correctional Institution, located in Portage, Wisconsin. Recently, plaintiff received a settlement from the Department of Corrections for previous abuse by prison staff. Plaintiff now has more than \$100,000 in his inmate trust fund account. The settlement agreement stated that plaintiff would be allowed "to support his family." Plaintiff was assured by his attorneys that he would have "no

problem assisting his family.”

In 2009, plaintiff filed a lawsuit against defendant Anthony Ashworth in this court. (This lawsuit was not the one for which he received a settlement.) After plaintiff filed the lawsuit, Ashworth was promoted to unit manager supervisor. In the past, plaintiff has been able to assist his mother by providing money for her to purchase medication, food and “bills related to [their] home.” On May, 17, 2011, plaintiff asked that money be transferred from his prison account to his mother. Defendant Ashworth denied that request and “fabricated numerous lies” about plaintiff to the new warden, defendant Michael Meisner. Prison policies do not allow a unit manager supervisor to deny a prisoner’s request to send money to his family. Rather, supervisors are supposed to allow prisoners to send “over \$25” to their families.

Plaintiff wrote to defendant Warden Meisner to explain that defendant Ashworth was retaliating against him for plaintiff’s previous lawsuit against Ashworth. Meisner responded by repeating various lies that Ashworth had told him, and “based on those lies denied [plaintiff’s] numerous request[s] to help [his] family.” After plaintiff contacted the Secretary of the Department of Corrections, Gary Hamblin, defendant Meisner “changed his tactic[s]” by creating a special procedure for plaintiff to transfer money to his family. This procedure was not reduced to written form.

Plaintiff continued to complain about not being able to send money to his family.

Defendants Meisner and Hamblin responded by saying that plaintiff needed his parole agent's permission to transfer money. However, plaintiff is not on parole. Plaintiff has written repeatedly to parole staff but they do not respond. Eventually, defendant Meisner and Hamblin refused to acknowledge plaintiff's requests and instead allowed defendant Captain Morgan to deny his requests.

DISCUSSION

A. Retaliation

Plaintiff contends that defendant Ashworth retaliated against him for filing a lawsuit against Ashworth in 2009. "An act taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000). Plaintiff must plead three elements in order to state a claim for retaliation. 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).

Although it is a close call, plaintiff's allegations are sufficient to state a claim for retaliation against defendant Ashworth. Plaintiff has satisfied the first element of a retaliation claim because plaintiff's filing of a lawsuit against defendant Ashworth is a constitutionally protected activity. With respect to the second element, plaintiff alleges that Ashworth denied his request to send funds in his trust fund account to his mother. At this stage, I can infer that denying plaintiff the use of his funds would deter a person of ordinary firmness from filing a lawsuit in the future. Finally, with respect to the third element of his retaliation claim, I can infer that defendant Ashworth denied plaintiff use of his funds because plaintiff had previously filed a lawsuit against him.

Plaintiff's retaliation claim is a classic example of a claim that is easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. Going forward, plaintiff may not prove his claim by simply relying on the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007). In particular, to prevail on the retaliation claim, plaintiff will have to provide evidence showing that his lawsuit against Ashworth was one of the reasons that his request to transfer funds to his mother was denied.

B. Due Process

A procedural due process violation occurs under the Fourteenth Amendment when a state actor deprives an individual of a constitutionally protected interest in “life, liberty, or property” without providing adequate process. Therefore, a due process analysis involves a two-step inquiry: (1) whether the defendants deprived the plaintiff of a constitutionally protected liberty or property interest; and (2) if so, whether that deprivation occurred without due process of law. *Doe v. Heck*, 327 F.3d 492, 526 (7th Cir. 2003) (citing *Zinerman v. Burch*, 494 U.S. 113, 125 (1990); *Doyle v. Camelot Care Centers, Inc.*, 305 F.3d 603, 616 (7th Cir. 2002)). From plaintiff’s allegations, I understand that he is alleging claims that defendants violated his right to procedural due process by rejecting his requests to have money sent to his mother. More precisely, I understand plaintiff to be alleging that defendants would not allow him to send more than \$25 at a time to his mother. Plaintiff appears to be referring to provisions in the Wisconsin Administrative Code requiring requests for disbursement of a prisoner’s funds exceeding \$25 to be approved by the prison’s superintendent, while allowing disbursements of \$25 or less to “an inmate’s one close family member” every 30 days without superintendent approval.

The court of appeals has suggested that a property interest may be implicated in the use of funds in a prison account. *Kimberlin v. United States Dep't of Justice*, 788 F.2d 434, 438 (7th Cir. 1986) (“The only cognizable property interest at stake here is the loss of the

money *or use of the money* in [prisoner's] commissary account.”) (emphasis added). However, some of plaintiff's allegations cannot support a due process claim because they suggest that the loss of use of his property was the result of “random and unauthorized acts” rather than acts carried out pursuant to a policy of the institution or the Department of Corrections. In the former situation, plaintiff is not entitled to procedure before his property is taken, so long as a meaningful remedy exists post deprivation. Hudson v. Palmer, 468 U.S. 517, 534-35 (1984) (no due process claim for random and unauthorized deprivation of property, even if taking is intentional, so long as state provides inmate suitable post deprivation remedy). The state of Wisconsin provides several post deprivation procedures for challenging the alleged wrongful taking of property. Wis. Stat. ch. 810 and 893 provide replevin and tort remedies. In particular, § 810.01 provides a remedy for the retrieval of wrongfully taken or detained property and ch. 893 contains provisions concerning tort actions to recover damages for wrongfully taken or detained personal property.

Therefore, I conclude that plaintiff fails to state claims upon relief may be granted with respect to the following “random and unauthorized” actions: (1) defendant Ashworth's denial of plaintiff's requests even though unit manager supervisors are not authorized to do so; and (2) defendant Meisner's creation of a special unwritten disbursement procedure for plaintiff even though Wis. Admin Code. § 309.48 requires a written procedure.

As for plaintiff's remaining claims, I understand that he is alleging a claim against

defendant Meisner for denying plaintiff's requests *before* creating the special unwritten procedure, as well as claims against defendants Hamblin and Morgan for denying his requests. It is unclear whether these denials were issued pursuant to state policy or whether they were random and unauthorized actions, but construing his complaint generously, I conclude that he has states due process claims against these defendants. As the case proceeds, it will be plaintiff's burden to provide evidence indicating that these denials were acts carried out pursuant to a policy of the institution or the Department of Corrections.

C. Breach of Contract

Next, plaintiff alleges that defendants denied his requests to send money to his mother despite the fact that the settlement agreement from a previous case stated that plaintiff would be allowed to "support my family." Plaintiff asks the court to determine whether defendants violated the terms of the settlement agreement. Such a claim would one for under state law for breach of contract. Federal courts may exercise supplemental jurisdiction over a state law claim that is "so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution," including "claims that involve the joinder or intervention of additional parties." 28 U.S.C. § 1367(a). Plaintiff's breach of contract claim is part of the same case or controversy as his federal retaliation and due process claims.

Accordingly, I will allow him to proceed on this claim.

D. Doe Defendants

Plaintiff lists "John Does 1-5" as defendants in the caption of his complaint, but he does not include any identifiable Doe defendants in the body of the complaint. Accordingly, I will dismiss these defendants from the lawsuit.

E. Preliminary Injunctive Relief

Plaintiff has filed a motion for preliminary injunctive relief seeking an order instructing prison officials to allow plaintiff to send money to his mother and to a lawyer, apparently in order to set up a trust for his family's use of his funds. After he filed that motion, plaintiff submitted a letter stating that "the prison [has] finally allowed me to send money to my mother." Therefore, I will deny plaintiff's motion for preliminary injunctive relief as moot.

ORDER

IT IS ORDERED that

1. Plaintiff Nathan Gillis is GRANTED leave to proceed on claims that (1) defendant Anthony Ashworth violated his rights under the First Amendment by denying his

disbursement requests in retaliation for filing a lawsuit against Ashworth; (2) defendants Michael Meisner, Gary Hamblin and Captain Morgan violated his due process rights by denying his disbursement requests; and (3) defendants Ashworth, Meisner, Hamblin and Morgan breached plaintiff's settlement agreement with the state by denying his disbursement requests.

2. Plaintiff is DENIED leave to proceed on claims that (1) defendant Ashworth violated plaintiff's due process rights by denying plaintiff's disbursement requests even though unit manager supervisors are not authorized to do so; and (2) defendant Meisner violated plaintiff's due process rights by creating an unwritten disbursement procedure for plaintiff.

3. Defendants John Does 1-5 are DISMISSED from the case.

4. Plaintiff's motion for preliminary injunctive relief, dkt. #3, is DENIED as moot.

5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show 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 he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of

documents.

7. 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 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 if it accepts service for defendants.

Entered this 16th day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge