

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ARCHIE BEAR, WILLIAM STRINGER,	:	
and MICHAEL McBRIDE,	:	
	:	
Plaintiffs,	:	CIVIL NO. 4:01-CV-40456
	:	
vs.	:	
	:	
WALTER KAUTZKY, and	:	REPORT AND RECOMMENDATION
JOHN MATHES,	:	ON DEFENDANTS' MOTION FOR
	:	SUMMARY JUDGMENT AGAINST
Defendants.	:	PLAINTIFF ARCHIE BEAR
	:	

Defendants, Walter Kautzky and John Mathes, have filed a Motion for Summary Judgment, (Clerk’s No. 21), seeking dismissal of Plaintiff Archie Bear’s claim under 42 U.S.C. § 1983. Plaintiffs, including Bear, seek injunctive and declaratory relief from a prison policy change that curtails the exchange of legal assistance and correspondence among inmates at Iowa State Penitentiary (ISP), Fort Madison, Iowa. In their Motion, Defendants assert that Bear’s claim is moot because he has been transferred from ISP to Anamosa (Iowa) State Penitentiary (ASP), where he presently resides. Bear does not resist the Motion as it relates to his claims for injunctive and declaratory relief. He asks, however, that he be able to recover costs of this matter, either in part or in full, in the event that the remaining Plaintiffs prevail on their claims.

This case was referred to the undersigned on November 12, 2003, for a Report and Recommendation under 28 U.S.C. § 636(b)(1)(B). This matter is fully submitted. After carefully considering the summary judgment record, the Court finds and recommends as follows on the issues presented.

STANDARD FOR SUMMARY JUDGMENT

A court shall grant a motion for summary judgment only if the record shows that no genuine issues of material fact exists, and the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The court in ruling on a motion for summary judgment must draw all justifiable inferences in the nonmoving party's favor. *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999).

The moving party bears the initial burden of proving that the case lacks a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The nonmoving party must then show sufficient evidence to establish every essential element of the party's case, and on which the party will bear the burden of proof at trial. Fed.R.Civ.P. 56(e); *Celotex*, 477 U.S. at 322-23.

MATERIAL FACTS NOT IN DISPUTE

The following facts are either undisputed or viewed in the light most favorable to Bear, the nonmoving party.

Before July 1, 2001, ISP allowed inmates to provide legal services to each other. To facilitate legal correspondence between inmates in the same housing unit, prison officials maintained the red star system for screening and delivering legal mail.

On July 1, 2001, ISP changed its policy and stopped allowing inmates to provide each other with legal services, requiring them instead to seek legal assistance from the private attorney under contract with the prison. Under the new policy, officials eliminated the red star system.

On July 27, 2001, Plaintiffs filed their Complaint, in which they claim that ISP's new policy prevents them from pursuing challenges to their criminal convictions in violation of their First and Sixth Amendment rights. Plaintiffs seek injunctive and declaratory relief, and costs.

On November 1, 2001, Bear was transferred to ASP, where he is currently incarcerated. Bear admits in his response that his claim presents issues related to termination of ISP's red star system, a system that is not present at ASP.

DISCUSSION

I. Claim Seeking Injunctive and Declaratory Relief

Defendants contend that Bear's claim and request for injunctive and declaratory relief are moot because he has been transferred to ASP. In Bear's Response, his attorney confirms that Bear is not seeking monetary damages or any form of relief other than injunctive and declaratory relief. Bear does

not oppose the Motion for Summary Judgment in relation to his claims for injunctive and declaratory relief.

An inmate's transfer away from a prison renders moot his claims seeking injunctive and declaratory relief from allegedly unconstitutional conditions at the prison. *See Smith v. Hundley*, 190 F.3d 852, 855 (8th Cir. 1999) (holding inmate's claims for injunctive and declaratory relief for alleged violation of his First Amendment right to practice his faith became moot when he was transferred from ISP to ASP; he was no longer subject to ISP officials' alleged unlawful policies or conduct); *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997) (holding that the release of certain prisoners left moot their request for injunctive relief, which was the only remedy they pursued on claims alleging deliberate indifference to a serious medical need and to rights under the Americans with Disabilities Act (ADA)); *Smith v. Boyd*, 945 F.2d 1041, 1043 (8th Cir. 1991) (holding that pretrial detainee's release from jail rendered moot his request for injunctive relief, which included claims of mail tampering and denial of meaningful access to the courts); *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985) (holding that an inmate's claims for declaratory and injunctive relief to improve prison conditions were moot, when he was transferred to another prison and was no longer subjected to the alleged conditions); *see also Randolph v. Rodgers*, 253 F.3d 342, 345-46 (8th Cir. 2001) (holding deaf inmate's ADA and Rehabilitation Act claims for injunctive relief were moot with respect to four of the five prison officials named as defendants, when inmate transferred to another prison; the actions required by an injunction - providing the inmate a sign-language interpreter during certain prison proceedings - would be impossible for the four defendants remaining at the original prison to execute). Based on current case law, Bear concedes his claims for injunctive and declaratory relief are moot as a result of his transfer from ISP to ASP, and he does not resist Defendants' request for summary judgment on these claims.

Viewing the record in the light most favorable to Bear, the Court finds that no genuine issues of material fact are in dispute, and Defendants are entitled to judgment as a matter of law on Bear's claims for injunctive and declaratory relief. The Court respectfully recommends that Defendants' Motion for Summary Judgment be granted in relation to his claims for injunctive and declaratory relief.

II. Request for Recovery of Costs

Even though Bear does not resist summary judgment on his claims for injunctive and declaratory relief, he requests that he be able to recover his costs in this matter should the remaining plaintiffs prevail on the merits of their claims.

Costs are governed by the general cost statute, 28 U.S.C. § 1920. In order to recover under the statute, Bear must prove himself to be a prevailing party because “a prevailing party is ordinarily entitled to recover costs.” *Lampkins v. Thompson*, 337 F.3d 1009, 1017 (8th Cir. 2003); see Fed.R.Civ.P. 54(d); 28 U.S.C. § 1920. A litigant is a prevailing party if he obtains some actual relief on the merits that “materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Murray v. City of Onawa, Iowa*, 323 F.3d 616, 619 (8th Cir. 2003) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)).

Since Bear has conceded that his claims are moot, thus entitling him to no form of relief, he cannot be a prevailing party within the meaning of § 1920. Even if the remaining plaintiffs should succeed, any injunctive and declaratory relief pertaining to ISP’s red star system will not directly benefit Bear because he no longer is an inmate at ISP. Therefore, Bear’s request for costs cannot be maintained.

Viewing the record in the light most favorable to Bear, the Court finds that no genuine issues of material fact are in dispute, and Defendants are entitled to judgment as a matter of law on Bear’s claims costs. The Court respectfully recommends that Defendants’ Motion for Summary Judgment be granted in relation to Bear’s request for costs.

RECOMMENDATION AND ORDER

IT IS RESPECTFULLY RECOMMENDED, under 28 U.S.C. § 636(b)(1)(B), that Defendants’ Motion for Summary Judgment (Clerk’s No. 21) against Bear be granted for the reasons discussed above, and judgment entered in favor of Defendants on all Bear’s claims.

IT IS ORDERED that the parties have until April 12, 2005, to file written objections to this Report and Recommendation, under 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. *Thompson v. Nix*, 897 F.2d 356, 357 (8th Cir. 1990) (per curiam); *Halpin v.*

Shalala, 999 F.2d 342, 345 & n.1, 346 (8th Cir. 1993). The Court will freely grant such extensions. *Martin v. Ellandson*, 122 F. Supp. 2d 1017, 1025 (S.D. Iowa 2000). Any objections filed must identify the specific portions of the Report and Recommendation and relevant portions of the record to which the objections are made and set forth the basis for such objections. *See* Fed.R.Civ.P. 72; *Thompson*, 897 F.2d at 357; *Martin*, 122 F. Supp. 2d at 1025. Failure to timely file objections may constitute a waiver of a party's right to appeal questions of fact. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Newton*, 259 F.3d 964, 966 (8th Cir. 2001) (citing *Griffini v. Mitchell*, 31 F.3d 690, 692 (8th Cir. 1994)).

IT IS SO ORDERED.

Dated this 21st day of March, 2005.



CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE