

2003 WL 23208945

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United States District Court,
W.D. Wisconsin.

Berrell FREEMAN, Plaintiff,
v.

Gerald BERGE and Jon E. Litscher, Defendants.

No. 03-C-0021-C. | June 19, 2003.

Attorneys and Law Firms

David J. Harth, for Plaintiff.

Corey F. Finkelmeyer, Assistant Attorney General,
Madison, WI, for Defendant.

Opinion

ORDER

CRABB, J.

*1 In an order dated June 3, 2003, I granted defendants' motion to dismiss plaintiff's claim that defendants subjected him to strip searches that were both unreasonable and constituted a use of excessive force because plaintiff had failed to exhaust his administrative remedies on this claim. Also, I granted defendants' motion to dismiss plaintiff's claim that he was denied social interaction and sensory stimulation by a combination of certain conditions of his confinement, after concluding that defendants are entitled to qualified immunity on this claim. I denied defendants' motion to dismiss plaintiff's claim that defendants denied him adequate food in violation of the Eighth Amendment. Still pending in this lawsuit is plaintiff's claim that defendants violated his Eighth Amendment right to be free from extreme cell temperatures.

Now before the court is plaintiff's motion for reconsideration of that part of the June 3, 2003, decision in which I granted defendants' motion to dismiss in part and a motion titled "Motion for Court Order/Intervention HELP!" I construe the latter motion as a motion for an order directing prison officials to return plaintiff's legal papers relating to this case.

Plaintiff's motion for reconsideration will be denied. The arguments plaintiff makes in support of his present motion are the same thorough and concise arguments he made in his brief in opposition to defendants' motion. I

have already considered these arguments carefully and remain convinced that the conclusion I reached in the June 3 order is not legally or factually erroneous.

With respect to plaintiff's motion for an order directing prison officials to return his legal papers to him, I will stay a decision until defendants provide information about the facts relating to this situation.

Plaintiff states that for approximately two weeks, he "smeared, smashed and spread" blood and feces on his cell wall. In response to this behavior, prison officials placed plaintiff in a clinical observation cell. While plaintiff was in observation, all of his personal belongings except his television, mattress and reading glasses were removed from his former cell. When he returned to his cell on June 4, plaintiff asked for his legal property, including all of his papers relating to this case. Defendants have not returned the property to plaintiff. Plaintiff suggests that prison officials have no excuse for failing to return his papers because they were enclosed in a large legal envelope and were not "exposed [to] or tainted" by his excrement and blood.

When an inmate engages in destructive behavior and destroys or contaminates his own legal property, prison officials have no obligation to replace or return his papers. Plaintiff avoids saying whether the *envelope* containing his legal papers was contaminated with feces or blood. His statement suggests only that the papers *inside* the envelope were protected from his blood and feces and thus should have been returned to him. I would disagree, if that is the scenario. Prison officials have no obligation to handle any container or envelope covered in feces or blood to retrieve its contents. On the other hand, if the envelope containing plaintiff's legal papers was in fact untainted by plaintiff's antics, then prison officials may be subject to an order directing them to return the papers to him.

*2 Accordingly, I will allow defendants one week, or until June 26, 2003, in which to advise the court of the disposition of plaintiff's legal property. If defendants advise me that the property was destroyed because it was contaminated by plaintiff's blood or feces or both, then I will count the pages of docketed materials in the court's file and advise plaintiff of the cost of obtaining another copy of the record from the court.

ORDER

IT IS ORDERED that

1) Plaintiff's motion for reconsideration of the June 3,

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2003, decision granting defendants' motion to dismiss in part is DENIED; and

2) A decision is STAYED on plaintiff's motion for an order directing prison officials to return plaintiff's legal papers relating to this case.

Further, IT IS ORDERED that defendants may have until June 26, 2003, in which to advise the court and plaintiff what disposition has been made of his legal property.