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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. | Dec. 3, 2003.

Attorneys and Law Firms

David J. Harth, for Plaintiff.

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

Opinion

ORDER

CROCKER, Magistrate J.

***1** The only two claims remaining in this lawsuit are plaintiff Berrell Freeman's allegations of unconstitutionally extreme cell temperatures, and the cruel and unusual denial of adequate food as a punishment. Virtually all information relevant to these claims now is in the record as a result of defendants' fully-briefed summary judgment motion. This has not prevented plaintiff from filing myriad motions to broaden his claims and to obtain additional discovery.

Earlier this fall the court entered several orders dealing with clusters of plaintiff's motions, *see* dkts. 92 (disposing of six motions) and 94 (eight motions).[1] It is now early December and enough new golden-hued sheaves have wafted through the door to merit yet another such order: today's chore is to address plaintiff's motions docketed as 108, 109, 110, 117, 118, 119, 120, 121, 122 and 123. For the reasons stated below, all are denied.

In September, Assistant Attorney General Finkelmeyer gave up even trying to respond to each of plaintiff's discovery motions. He summarized his position in a September 4, 2003 letter to the court (filed in the correspondence folder) in which he contended that he had more than met all of his discovery obligations in this lawsuit by virtue of the information disclosed in defendants' proposed findings of fact in support of summary judgment; even so "the defendants fully anticipate that the plaintiff will be either wholly or partially dissatisfied with defendants' solution to these discovery issues." AAG Finkelmeyer was correct, plaintiff has filed the motions listed above, and the defendants have not even bothered to respond to them, presumably because they are satisfied that they have made their record and because they are tired of playing plaintiff's game. Having covered most of this ground before, I will not spend much time on motions that are repeats, immaterial variations of their predecessors, or clearly beyond the ken of allowable discovery in this case.

108 is a motion for sanctions, asking this court to strike the affidavit of defendant Gerald Berge offered in support of defendants' motion for summary judgment. Although plaintiff invokes F.R.Civ.Pro. 11, there is no indication that he provided defendant Berge with the required notice, but I doubt Berge would have withdrawn the contested portion of his affidavit. This court's practice is to stay a ruling on a motion to strike a submission relevant to summary judgment until the court rules on the underlying summary judgment motion. Here, plaintiff simply disputes Berge's interpretation of certain portions of the prisoner handbook and practices flowing therefrom. This is not a ground to strike an affidavit; at best, it could be viewed as a dispute over a proposed finding of fact. There is no need to stay a ruling on the motion to strike: 108 is DENIED. Nonetheless the court will consider plaintiff's allegations when considering defendants' proposed findings of fact.

***2** 109 is plaintiff's motion for a response from defendants as required by this court's August 29, 2003 order; 110 is a fully-contained subset, demanding production of all information requested in his July 30 discovery demand. Defendants, in their September 4 letter, quoted above, explicitly responded to the court's order by adopting their summary judgment submissions as their discovery response. It's an unorthodox approach, but in this situation it works: every *relevant* fact in defendants' possession that plaintiff wants disclosed now is of record. Undoubtedly plaintiff disputes many of defendants' claims, but from a discovery perspective, plaintiff is not entitled to anything else. It's not as if defendants would have or could have provided any different or additional information in response to plaintiff's discovery demands; in fact, defendants' presentation of the facts in their submissions to the court undoubtedly is a smoother narrative that ought to be more useful to plaintiff. So, 109 and 110 are DENIED.

117 is a motion asking this court to order defendants to stop interfering with plaintiff's mail seeking discovery in this case. According to plaintiff, on August 15, 2003 he put into the prison mail stream a request for documents to someone named Marie Morris and asked her to mark her return envelope "legal." According to plaintiff, on

September 24, 2003 he received a notice of non-delivery for the letter. It is not entirely clear, but from context, it seems that the prison decided not to deliver the letter, but waited over a month before advising plaintiff. Plaintiff claims that although the prison has a right to inspect his mail, this particular letter did not violate any DOC rules and it should have been delivered. Plaintiff then sent a flurry of letters to defendant Berge demanding that the letter be sent; according to plaintiff, Warden Berge declined to answer, at least in part because of the institutional policy that "correspondence to [Warden Berge] on paper supplied to you as part of the 'legal loan' process will not be acknowledged, read or responded to." *See* Dkt. 117 at ¶ 7. Plaintiff complains that this is not true, and that he is entitled to have his letter delivered. This is a circumstance in which a brief response from defendants would have been helpful. Nonetheless, I am not prepared to conclude that plaintiff automatically is entitled to delivery of his letter to Morris. There are legitimate reasons for prisons to control outgoing prisoner mail, and plaintiff's proffer in his motion does not provide enough information for me to determine that he is entitled to any of the relief he is requesting. If plaintiff wants the letter delivered, he must explain who Marie Morris is, what documents he requested of her, and why this qualifies as legal mail relevant to this lawsuit. I will then reconsider this issue. So that the pending motion doesn't linger in limbo, 117 is DENIED WITHOUT PREJUDICE.

***3** 118 and 120 are simply follow-ups to plaintiff's previously-denied motions, except with requests for harsher sanctions. Having reviewed the case file and all the submissions, I am satisfied that although plaintiff does not haveindeed never will have-everything *he* wants from the defendants, the defendants have complied with their discovery and disclosure obligations in the instant lawsuit. 119 is a motion to strike all of defendants' summary judgment exhibits because they are not authenticated to be accurate, complete or true. Actually, ICE Ellen Ray has sworn that the exhibits are "true and exact copies" of the originals, which suffices. *See* Affidavit, dkt. 103, at 2. In sum, 118–120 are DENIED.

121 is plaintiff's motion to compel sworn answers from both defendants to his September 26, 2003 interrogatories. According to plaintiff, all he got was an unsigned, answer from one defendant (Berge). Given the posture of this particular case, plaintiff's proffer is insufficient to establish a discovery violation. Without further specification from plaintiff as to what he actually requested in his September 26 interrogatories and what defendant Berge actually said in response, there is no basis for me to compel defendant to disclose any additional information. On the record before the court 121 is DENIED.

122 is another motion to compel based on plaintiff's irritation with defendants' objections to his various September 2003 discovery requests. Plaintiff demanded "absolutely any and all" inmate handbooks, clinical file records and incident reports about plaintiff. Plaintiff also requested a number of new admissions from defendants to which defendants objected on relevance grounds. Having considered all of plaintiff's various requests for production and admissions, I conclude that defendants are right and plaintiff is wrong. The issues remaining in this lawsuit are extremely narrow and plaintiff's tenacious attempts to broaden them and to obtain related discovery have been, are, and will continue to be absolutely unavailing. Plaintiff has access to the information he needs, so he is not entitled to the relief he seeks in this motion. 122 is DENIED.

123 is plaintiff's motion to compel additional responses to plaintiff's October 13, 2003 request for production of documents. Plaintiff sought all records of all visits he received at SMCI/WSPF, and well as all records that showed plaintiff regularly participated in Ramadan. Given the nature of his two remaining claims, there is nothing relevant about this information and defendants were within their rights to object. 123 is DENIED.

ORDER

IT IS ORDERED that plaintiff's motions docketed as 108, 109, 110, 117, 118, 119, 120, 121, 122 and 123 all are DENIED.

Footnotes

1 Not to mention the orders docketed as 9, 22, 24, 28, 38, 41, 42, 46, 52, 114 and 115 that dealt only with one or two motions each. Occasionally plaintiff wins a portion of a motion, but not often enough to justify his obsessive and repetitive motions practice.