UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

July 1, 2020

Before: JOEL M. FLAUM, Circuit Judge
MICHAEL S. KANNE, Circuit Judge
AMY C. BARRETT, Circuit Judge

No. 19-3221	MARLON L. WATFORD, Plaintiff - Appellant v. RANDY PFISTER, et al., Defendants - Appellees

Originating Case Information:

District Court No: 1:19-cv-03868
Northern District of Illinois, Eastern Division
District Judge Virginia M. Kendall

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

APPENDIX
A1

form name: **c7_FinalJudgment**(form ID: **132**)

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 30, 2020*
Decided July 1, 2020

Before

JOEL M. FLAUM, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-3221

MARLON L. WATFORD,
Plaintiff-Appellant,

v.

RANDY PFISTER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 19 C 3868

Virginia M. Kendall,
Judge.

ORDER

Marlon Watford, an Illinois inmate, believes that the prison where he formerly was housed overcharges inmates for legal photocopying services. He brought this civil rights suit against prison officials, and the district court dismissed the complaint with prejudice for failure to state a claim. We affirm the judgment.

---

* The defendants were not served with process in the district court and are not participating in this appeal. We have agreed to decide this case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

During Watford's confinement at Stateville's Northern Reception and Classification Center in 2017, the prison began charging ten cents per copy to photocopy legal documents. (The prior cost of a copy is not clear from the record.) The state administrative code states that "[t]he cost for reproduction [of photocopied materials] will be determined by the facility based on actual cost per copy." 20 ILL. ADMIN. CODE § 430.40(a). Watford says that the prison's cost is only one cent per photocopy.

Watford sued the warden and four other prison officials under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1. He alleged that the ten-cent fee violates his religion because, as a devout Muslim, he must "keep himself free from all forms of oppression," including "financial oppression." He also alleged that the fee increase amounts to cruel and unusual punishment in violation of the Eighth Amendment and that he has a due-process property interest in being charged only one cent per copy. Finally, he asserted that because the fee contravenes the state administrative code, it also violates federal law.

At screening, *see* 28 U.S.C. § 1915A, the district court dismissed the complaint with prejudice on several grounds. The court first stated that Watford's 65-page complaint "runs afoul" of Federal Rule of Civil Procedure 8(a) because it contains "many pages of immaterial information, argument, and legal conclusions." The court then concluded that Watford failed to state a claim for relief because the complaint primarily alleged that the ten-cent fee violates the state administrative code, and noncompliance with state law does not by itself violate the Constitution. It also called the suit "duplicative and malicious," stating that Watford "has tried, unsuccessfully, twice now to litigate the same/similar issues" in federal court, citing *Watford v. Ellis.*, 15-CV-567 (S.D. Ill.), and *Watford v. Doe*, 15-CV-9540 (N.D. Ill.). The court assessed Watford a strike, his third, under 28 U.S.C. § 1915(g). Watford moved to alter or amend the judgment, *see* FED. R. CIV. P. 59(e), to no avail.

On appeal, Watford first contends that his complaint does not violate Rule 8(a), as the district court stated, because, setting aside the 45 pages of attached exhibits, it is only 20 pages long. He has a point: where, as here, the complaint is not "too confusing to determine the facts that constitute the alleged wrongful conduct," dismissal based on "undue length" or "the inclusion of superfluous material" generally is inappropriate. *Stanard v. Nygren*, 658 F.3d 792, 797–98 (7th Cir. 2011); *see also Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013) (noting that 28–page complaint "is not excessively long" given number of claims and that district court could have "stricken without bothering to read" 71-page appendix). Even so, any error in this regard would be harmless

because the district court did not rely on Rule 8(a) alone in dismissing the complaint. Rather, as the court twice stated, it dismissed the complaint because it failed to state a claim and because it was duplicative and malicious.

Watford next suggests that, in concluding that he failed to state a claim for relief, the district court focused on his state-law allegations only and ignored his invocations of RLUIPA and the First, Eighth, and Fourteenth Amendments. Regardless of how Watford frames his claims, however, they all turn on an alleged violation of the state administrative code. And as the district court correctly recognized, the violation of a state law is "completely immaterial ... of whether a violation of the federal constitution has been established." *Thompson v. City of Chicago*, 472 F.3d 444, 454 (7th Cir. 2006).

In any event, Watford cannot state a claim for relief under any of the federal provisions that he cites. The prison's ten-cent photocopy fee does not implicate the Eighth Amendment, which prohibits prison conditions that "deprive inmates of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Watford also cannot state a claim under RLUIPA or the First Amendment. *See Holt v. Hobbs*, 574 U.S. 352, 356–58 (2015) (noting that RLUIPA provides greater protection than First Amendment). Even if we assume that Watford's request for a lower fee is "sincerely based on a religious belief and not some other motivation," *id.* at 360–61, he cannot show that the ten-cent fee substantially burdens his religious exercise. 42 U.S.C. § 2000cc-1. The prison's fee increase on an optional service has not coerced Watford to modify his behavior in a way "undeniably at odds" with his religious beliefs nor has it rendered his religious exercise "effectively impracticable." *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013) (internal quotation marks and citations omitted). Finally, Watford cannot state a claim under the Due Process Clause because the state administrative code section that he cites does not create a benefit to which he has a "legitimate claim of entitlement." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *Bell v. City of Country Club Hills*, 841 F.3d 713, 717 (7th Cir. 2016).

We have considered Watford's other arguments, and none has merit.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Marlon L. Watford (R-15678),	)	
	)	
Plaintiff,	)	
	)	Case No. 19 C 3868
v.	)	
	)	Judge Virginia M. Kendall
	)	
Officer Manning, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* [3] is granted. The Court orders the trust fund officer at Plaintiff's place of incarceration to immediately deduct $2.75 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee and to continue making monthly deductions in accordance with this order. The Court directs the Clerk of Court to send a copy of this order to the trust fund officer at Plaintiff's place of incarceration. Summonses, however, shall not issue. Plaintiff's complaint [1] is dismissed with prejudice for failure to state a claim, and as duplicative and malicious. Further amendment would be futile. This dismissal counts as one of Plaintiff's three allotted dismissals ("strikes") under 28 U.S.C. § 1915(g). Final judgment shall enter. Case terminated.

STATEMENT

Plaintiff Marlon L. Watford, a prisoner currently confined at Menard Correctional Center, filed this *pro se* civil rights lawsuit pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1. Plaintiff, a "devout" Muslim who was temporarily housed at Stateville's Northern Reception Center ("NRC") at the time of the events complained-of in this lawsuit, alleges that Defendants violated his rights by raising/inflating the costs of legal photocopying. (Dkt. 1 at pg. 2, 8.) Plaintiff names six Illinois Department of Corrections officials as Defendants in this lawsuit. (*Id.* at pg. 1.) Currently before the Court is Plaintiff's application to proceed *in forma pauperis* and his complaint for initial review.

Plaintiff has demonstrated that he cannot prepay the filing fee, and thus, his application for leave to proceed *in forma pauperis* is granted. Pursuant to 28 U.S.C. § 1915(b)(1), (2), the Court orders: (1) Plaintiff to immediately pay (and the facility having custody of him to automatically remit) $2.75 to the Clerk of Court for payment of the initial partial filing fee and (2) Plaintiff to pay (and the facility having custody of him to automatically remit) to the Clerk of Court twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The Court directs the Clerk to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States District Court, 219 South

Appendix B

Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and should clearly identify Plaintiff's name and the case number assigned to this case.

As discussed in more detail below, Plaintiff is an experienced litigator and he has been granted leave to proceed *in forma pauperis* in a number of his other cases (both in this district and others). Thus, he is advised that monthly installment payments are assessed using a per-case approach, under which fee obligations cumulate, *i.e.*, an inmate pays 20% of his monthly income for *each* case or appeal in which he is allowed to proceed *in forma pauperis*. *See Bruce v. Samuels*, — U.S. —, 136 S. Ct. 627, 629 (2016). The filing fees will remain Plaintiff's obligation even if he is transferred to another facility.[1]

Under 28 U.S.C. § 1915A, the Court is required to screen prisoners' complaints and dismiss the complaint, or any claims therein, if the Court determines that the complaint or claim is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. *See Jones v. Bock*, 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). Courts screen prisoners' complaints in the same manner they review motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011).

A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). The statement also must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," which means that the pleaded facts must show there is "more than a sheer possibility that a defendant acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When screening a *pro se* plaintiff's complaint, courts construe the plaintiff's allegations liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). Courts also must "accept all well-pleaded facts as true and draw reasonable inference in the plaintiff's favor." *Roberts v. City of Chicago*, 817 F.3d 561, 564 (7th Cir. 2016).

Plaintiff's complaint cannot proceed for the reasons discussed below.

Initially, Plaintiff's complaint runs afoul of Rule 8(a), which requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." While a minor amount of surplus material in a complaint is not enough to frustrate the goals of Rule 8, unnecessary length coupled with repetitiveness, needless complexity, and immaterial allegations are grounds for

---

[1] Along these lines, the Court notes that two of Plaintiff's prior cases have been dismissed with prejudice and assessed "strikes" under 28 U.S.C. § 1915(g) (*see Watford v. Doe, et al.*, case no. 15CV9540 (N.D.Ill.) and *Watford v. Quinn*, case no. 14CV0571 (S.D.Ill.)). The PLRA provides that a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a Court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). As discussed in further detail below, the dismissal of this case counts as Plaintiff's third "strike." Thus, Plaintiff may not bring a civil action (or appeal) *in forma pauperis* unless he can show he is in imminent danger of serious physical injury.

2)

dismissal. *Kadamovas v. Stevens*, 706 F.3d 843, 844 (7th Cir. 2013). The document submitted by Plaintiff -- which spans 65 pages (including numerous exhibits) -- does not comply with Rule 8 insofar as Plaintiff's allegations contain many pages of immaterial information, argument, and legal conclusions, which the Court need not parse to identify potential claims. *See Lindell v. Houser*, 442 F.3d 1033, 1034 n.1 (7th Cir. 2006) ("District courts should not have to read and decipher tomes disguised as pleadings.").

Second, a good portion of Plaintiff's complaint alleges that Defendants' conduct violates particular sections of the Illinois Administrative Code (related to inmate access to the law library for photocopying and/or the costs for legal photocopying). To the extent that Plaintiff is attempting to state a claim based on these allegations, he has failed to do so. This is so because noncompliance with state laws or procedures does not, by itself, violate the Constitution. *See, e.g., See Thompson v. City of Chicago*, 472 F.3d 444, 454 (7th Cir. 2006) (explaining that section 1983 protects plaintiffs from constitutional violations, not violations of state law or departmental regulations); *Hamlin v. Vaudenberg*, 95 F.3d 580, 583 (7th Cir. 1996) (dismissing claim that defendants did not comply with applicable state regulations); *White v. Olig*, 56 F.3d 817, 821 (7th Cir. 1995) (holding that "failure to follow procedures mandated by state but not federal law . . . can only establish a state law violation" and "are not remedial under Section 1983").[2]

Moreover, this is not the first time that Plaintiff has filed a federal civil rights lawsuit complaining that certain costs associated with litigation have caused him to suffer what he describes as "financial oppression," and that his religious beliefs are violated by this oppression due to a tenant of the Islamic faith that requires one to be free from same. For instance, in May 2015, Plaintiff filed a civil rights lawsuit in the Southern District of Illinois, alleging that, as a member of the Al-Islam faith, he has a spiritual obligation to maintain bodily freshness and maintain radiant skin. Plaintiff claimed that officials at Menard sought to have certain personal hygiene items removed from the commissary. Plaintiff claimed that these items prevented him from fulfilling his religiously-mandated duties, and thereby constituted cruel and unusual punishment and a violation of his religious rights. Plaintiff also claimed that officials at Menard raised the price of photocopies at the law library and this caused him "financial oppression" in violation of his constitutional rights. He also claimed that the institution's policy as to spending limits at the commissary violated his constitutional rights. Plaintiff claimed that the

---

[2] The Court notes that Plaintiff seems to take issue primarily with § 430.40(a) of the Illinois Administrative Code, which provides that: "[m]aterials may be photocopied by the library. The cost for reproduction will be determined by the facility based on actual cost per copy and charged to the committed person." Throughout his pleading, Plaintiff indicates Defendants' conduct (in allegedly raising/inflating the costs of photocopying) violates this particular section. For the reasons explained above, these allegations do not state a federal claim. The numerous exhibits attached to Plaintiff's complaint also tend to undermine any potential state law claim(s) stemming from a purported violation of § 430.40(a). For instance, Plaintiff provides detailed documentation (that he received in a response to a FOIA request) explaining how Stateville's NRC assesses costs for legal photocopying (which reflects the cost of the paper and also of the rental fee for the photocopy machine). (Dkt. 1 at pgs. 35-37.) Plaintiff has also attached grievance response paperwork showing that a grievance related to being charged for photocopies was denied in October 2017. (*Id.* at pg. 29.) Further, and along these same lines, Plaintiff has attached a copy of *Cebertowicz v. Baldwin, et al.*, 416 Ill. Dec. 744, 86 N.E.3d 374 (App. Ct. 4th Dist. 2017). In that case, the Illinois Appellate Court affirmed the trial court's denial of Plaintiff's summary judgment motion and the grant of Defendants' summary judgment motion where an IDOC inmate sought an order of mandamus against prison officials at Lawrence Correctional Center to compel compliance with prison rules (namely, 20 Ill. Adm. Code 430.40(a)) related to photocopy fees.

aforementioned issues caused him various health problems. *See Watford v. Ellis, et al.*, case no. 15C0567 (S.D.Ill.). All of Plaintiff's claims – except for those for injunctive relief based on Defendants' alleged denial of access to petroleum jelly by eliminating it from the commissary in 2013 – were dismissed at summary judgment on exhaustion grounds. (*See id.* at docket no. 50.) The remaining claims for injunctive relief were subsequently dismissed after a bench trial. (*See id.* at docket no. 86.)

In October 2015, Plaintiff filed a federal civil rights lawsuit in this district, alleging that, as a Muslim who practices the religion of Al-Islam, he has a spiritual duty to be free from all forms of oppression, including financial and social oppression. Plaintiff alleged that officials at Stateville financially and socially oppressed him by refusing to allow him to utilize Stateville's free legal postage and by refusing to cover the costs of certain postage fees while he was a temporary court writ inmate. Plaintiff claimed that as a result of the purported oppression, another one of his cases in the Southern District -- 14C0571 -- was dismissed for failure to prosecute. Plaintiff claimed that these events caused him health problems. *See Watford v. Doe, et al.*, case no. 15 C 9540) (N.D.Ill.). On October 11, 2017, the court dismissed the case with prejudice for failure to state a claim and for failure to disclose his litigation history. (*See id.* at docket no. 46.)

Plaintiff is an experienced litigator, and, as set forth above, he has tried, unsuccessfully, twice now to litigate the same/similar issues that he seeks to litigate in this lawsuit. Plaintiff's claim in case no. 15CV5067 that officials at Menard raised the price of photocopies at the law library and this caused him "financial oppression" in violation of his constitutional rights was dismissed at summary judgment on exhaustion grounds. Plaintiff's complaint in case no. 15CV9540 – in which Plaintiff claimed that officials at Stateville financially and socially oppressed him by refusing to allow him to utilize Stateville's free legal postage and by refusing to cover the costs of certain postage – fared no better. That case was dismissed for failure to state a claim and for Plaintiff's failure to disclose his litigation history. Plaintiff's complaint in this case merely "re-packages" his complaint in Case No. 15CV0567, and his other prior lawsuits, against a new set of IDOC Defendants, in an attempt to make an end-run around the underlying unfavorable findings in his previous cases. Duplicative, repetitious litigation of this nature is impermissible. *See Alexander v. United States*, 121 F.3d 312, 316 (7th Cir. 1997) (explaining that federal courts have the inherent power to protect themselves from litigants who vexatiously multiply the proceedings).

Accordingly, Plaintiff's complaint is dismissed with prejudice for failure to state a claim upon which relief can be granted, and also as duplicative and malicious. *See Health Cost Controls v. Skinner*, 44 F.3d 535, 537 (7th Cir. 1995) ("[I]f a plaintiff fails to properly allege a claim for relief brought under a federal statute, the case should be dismissed under Federal Rule of Civil Procedure 12(b)(6)[.]"); *Smith v. Gleason*, 2013 WL 6238488, at *7 (W.D. Wis. Nov. 27, 2013) ("Repetitive allegations are considered malicious and are grounds for dismissal under the PLRA.") (citing *Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003)). Because "there is no reason to believe that the flaw in the amended complaint could be remedied through more specific pleading," the dismissal is with prejudice. *See Pramuk v. Hiestand*, No. 3:16-CV-572, 2016 WL 7407011, at *3 (N.D. Ind. Dec. 22, 2016) (collecting cases). The dismissal also counts as a "strike" under 28 U.S.C. § 1915(g).

Plaintiff is warned that, because he now has a total of three or more federal cases dismissed for either failure to state a claim, as malicious, or frivolous (namely this case, *Watford v. Doe, et al.*, case no. 15CV9540 (N.D.Ill.) and *Watford v. Quinn*, case no. 14CV0571 (S.D.Ill.)), he may not file suit in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Plaintiff also must disclose the fact that he has accumulated three or more "strikes" under § 1915(g). *See Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008) ("A litigant who knows that he has accumulated three or more frivolous suits or appeals must alert the court to that fact."). Plaintiff's failure to disclose his litigation history, including his "strikes," when he files any new federal lawsuit will result in immediate dismissal of the action with prejudice. *See, e.g., Ammons*, 547 F.3d at 725 ("Plaintiffs who attempt to . . . evade their obligation to pay all required fees and costs, cannot expect favorable treatment[.]"); *see also Sloan*, 181 F.3d at 858-59 (explaining that "fraud" on the Court must "lead to immediate termination of the suit").

If Plaintiff wishes to appeal in this case, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). Because Plaintiff has now "struck out" under Section 1915(g) and this case does not involve imminent danger of serious physical injury, he must include the $505.00 appellate filing fee if he should decide to file a notice of appeal.

Date: July 19, 2019

/s/Virginia M. Kendall
United States District Judge

(5)

5)

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

August 28, 2020

Before

JOEL M. FLAUM, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 19-3221

MARLON L. WATFORD,
Plaintiff-Appellant,

v.

RANDY PFISTER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 19 C 3868

Virginia M. Kendall,
Judge.

ORDER

On consideration of the petition for rehearing and rehearing *en banc* filed in the above-entitled cause by *pro se* appellant, Marion L. Watford on August 12, 2020, no judge in active service has requested a vote on the petition for rehearing *en banc* and all members of the original panel have voted to deny rehearing. It is, therefore,
ORDERED that rehearing and rehearing *en banc* are **DENIED**.

APPENDIX
C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

November 5, 2020

Before: FRANK H. EASTERBROOK, Circuit Judge
MICHAEL S. KANNE, Circuit Judge
DIANE P. WOOD, Circuit Judge

No. 18-3736	MARLON L. WATFORD, Plaintiff - Appellant v. ROB JEFFREYS, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:15-cv-00567-SCW Southern District of Illinois Magistrate Judge Stephen C. Williams	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date. We assess Watford one strike for this frivolous suit and a second one for pursuing this appeal. See 28 U.S.C. § 1915(g); Flynn v. Thatcher, 819 F.3d 990, 992 (7th Cir. 2016).

form name: **c7_FinalJudgment**(form ID: **132**)

Appendix D

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 2, 2020*
Decided November 5, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 18-3736

MARLON L. WATFORD,
Plaintiff-Appellant,

v.

ROB JEFFREYS, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 15-567-SCW

Stephen C. Williams,
Magistrate Judge.

ORDER

Marlon Watford, a Muslim prisoner at Menard Correctional Center, believes that prison officials violated his Eighth Amendment rights when they raised photocopying

---

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C). Additionally, Rob Jeffreys, who became acting director of the Illinois Department of Corrections after this appeal was filed, has been substituted for John Baldwin as the named appellee. See FED. R. APP. P. 43(c)(2).

charges at the prison's law library and banned the sale of petroleum jelly and baby powder at the commissary. The ban on petroleum jelly, he adds, also violated his First Amendment rights and the Religious Land Use and Institutionalized Persons Act. 42 U.S.C. § 2000cc (RLUIPA). The district court entered summary judgment against him on all but one claim and later deemed that remaining claim moot. We affirm.

In 2013, Menard implemented changes that Watford says have affected his well-being. In September, the warden raised photocopying charges in the law library from five to ten cents per page—a fee hike that Watford says ruined him financially, especially because the prison has not raised his stipend. Watford, who describes himself as an active practitioner of Al-Islam, says that the higher fee violates his faith's requirement that he be free from "financial oppression."

Around the same time, prison officials decided that the commissary no longer would stock petroleum jelly and baby powder—items Watford had relied on for personal hygiene (to moisturize his skin and control itching and sweating) and to cleanse his body in preparation for prayer. Prison officials maintained that these toiletry items posed security risks: Petroleum jelly could be used as an accelerant for a fire hot enough to melt plastic into weapons, and baby-powder containers could be used to stash contraband. In 2014, however, officials reversed course and returned petroleum jelly to the commissary. Watford testified that the stress from these prison policies exacerbated his H. pylori scar tissue and triggered both stomach inflammation and irritable-bowel syndrome.

Watford brought this suit under 42 U.S.C. § 1983 and RLUIPA seeking damages and injunctive relief against 13 prison officials, including the director of the Illinois Department of Corrections, Menard's warden, and numerous correctional officers. Early in the proceedings, the district court recruited counsel to help Watford amend his complaint. At screening, see 28 U.S.C. § 1915A, the court allowed Watford to proceed on his claims under the Eighth Amendment—that the photocopy-fee increase was financially oppressive, and that the ban on the toiletry items prevented him from maintaining his hygiene, causing great stress and gastrointestinal issues. The court also allowed him to pursue claims under the First Amendment and RLUIPA with regard to the ban on petroleum jelly—a ban that, he said, burdened his religious rights by interfering with skin-care practices he followed to prepare for prayer.

A magistrate judge presiding with the parties' consent, see 28 U.S.C. § 636(c), eventually entered summary judgment against Watford on most of his claims.

Watford's Eighth Amendment claims failed, the judge ruled, because no evidence showed that his grievances over photocopy fees or the unavailable toiletry items deprived him of the minimal civilized measure of life's necessities, let alone subjected him to a substantial risk of harm. As for his First Amendment claim, the judge continued, the record demonstrated that legitimate penological reasons—security concerns—justified the temporary ban on petroleum jelly. After a bench trial, the judge ruled that Watford's remaining RLUIPA claim (seeking injunctive relief) was moot. Watford filed a post-judgment motion to alter or vacate the judgment, which the court denied.

On appeal Watford challenges the entry of summary judgment on his Eighth Amendment claims, arguing that the district court overlooked two fact questions. He points, first, to the question whether the increased photocopying fees deprived him of basic life necessities. But we recently addressed and rejected this same argument in another of Watford's appeals. See *Watford v. Pfister*, 811 F. App'x 374, 376 (7th Cir. 2020) (citing *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). To the extent Watford suggests that the fee hike violates the state administrative code's requirement that photocopy costs reflect the facility's actual costs, 20 ILL. ADMIN. CODE § 430.40(a), he is making a point that is neither here nor there for our purposes. The federal constitution is not offended simply because a state statute has been violated. See, *e.g.*, *Wells v. Caudill*, 967 F.3d 598, 602 (7th Cir. 2020) (citing cases).

The second fact question proposed by Watford concerns the degree of harm he suffered as a result of not being able to obtain petroleum jelly or baby powder from the commissary. As evidence that these items were essential to life's necessities, he highlights the stress and digestive tract issues he says he suffered because of their unavailability. But Watford is bound by his lawyer's concession in responding to the defendants' motion for summary judgment that Watford had no verifiable medical evidence of being physically harmed by the facility's policies. See *Milwaukee Ctr. for Indep., Inc. v. Milwaukee Health Care, LLC*, 929 F.3d 489, 493 (7th Cir. 2019). Even if Watford could prove that his health issues presented a substantial risk of serious harm, nothing in the record reflects that defendants were aware of that risk and disregarded it. See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

Watford next contends that summary judgment was improper on his First Amendment claim because a material fact dispute exists over the legitimacy of the prison's security justifications for removing petroleum jelly from the commissary. He points to a correctional officer's deposition testimony that hair grease presented the

same risks as petroleum jelly yet never was removed from the commissary. But on this matter, too, Watford's counsel made another binding admission in his response to the summary judgment motion—agreeing that petroleum jelly had been removed for security purposes. In any event, Watford identifies no evidence to support an inference that the prison's reasons for removing petroleum jelly were illegitimate. See *O'Lone v. Shabazz*, 482 U.S. 342, 349 (1987); *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013).

Finally, Watford argues that recruited counsel provided deficient performance that effectively deprived him of due process. But he forfeited this argument by not raising it first before the district court. See *Soo Line R.R. Co. v. Consol. Rail Corp.*, 965 F.3d 596, 601 (7th Cir. 2020). During discovery, the court told Watford on separate occasions that he could move to dismiss counsel if he was dissatisfied with counsel's performance, but Watford stood pat. Regardless, civil litigants have "neither a statutory nor a constitutional right to counsel," and so due process is not at issue. *Walker v. Price*, 900 F.3d 933, 935 (7th Cir. 2018).

We have considered Watford's remaining arguments, and none has merit. We assess Watford one strike for this frivolous suit and a second one for pursuing this appeal. See 28 U.S.C. § 1915(g); *Flynn v. Thatcher*, 819 F.3d 990, 992 (7th Cir. 2016).

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARLON L. WATFORD,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 15-cv-00567-GCS
	)	
JACQUELINE LASHBROOK, et al.,	)	
	)	July 23, 2018
Defendant.	)	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE STEPHEN C. WILLIAMS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES

FOR PLAINTIFF:
Lane Matthews, Esq.
Page Law, LLC
9930 Watson Road
St. Louis, MO 63126
(314) 835-5800

FOR DEFENDANT:
Clayton J. Ankney, Esq.
IL Attorney General's Office
500 S. Second Street
Springfield, IL 62701
(217) 782-2077

REPORTED BY:
Laura A. Esposito, RPR, CRR, CRC
Official Court Reporter
U.S. District Court
750 Missouri Avenue
East St. Louis, IL 62201
(618) 482-9481
Laura_Esposito@ilsd.uscourts.gov

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

Appendix E

(Proceedings convened in open court)

COURTROOM DEPUTY: Case Marlon L. Watford vs. Officer Wooley, et al., 15-567-SCW, hearing on Motion for Summary Judgment. Will the parties please get their names in the record.

MR. MATTHEWS: My name's Lane Matthews. I'm here for the plaintiff, Mr. Watford.

THE COURT: Good morning, Mr. Matthews. It's been a little while. Good to see you again.

MR. ANKNEY: Clayton Ankney for the defendants, Your Honor.

THE COURT: Good morning, Mr. Ankney. I haven't seen you in a while.

We're here for the hearing on the Motion for Summary Judgment filed by the defendants on all remaining claims. After the exhaustion issues the case was narrowed down to Eighth Amendment claims regarding petroleum jelly and baby powder. Then there's a First Amendment claim relating to the petroleum jelly. And then there's a RLUIPA claim relating to petroleum jelly.

So let's start with the Eighth Amendment claims. Anything you want to add, Mr. Ankney?

MR. ANKNEY: Nothing more than to say that the plaintiff has no constitutional right to purchase any items at the commissary and, therefore, his claims should be

dismissed.

THE COURT: Okay. I mean really the issue is whether it's to purchase an item or not. I mean if it's an Eighth Amendment violation it doesn't matter whether it's something he has to purchase or something he should be provided. The issue is: Does he have to have this stuff under the Eighth Amendment, right? I mean, you can frame it that way but that's really -- to say he doesn't have a right to purchase anything is true, but if he needed it, then you just have to give it to him, right?

MR. ANKNEY: Okay, Your Honor, so --

THE COURT: The real question is: Is it really an Eighth Amendment violation not to have petroleum jelly and baby powder?

MR. ANKNEY: Yes, Your Honor. The plaintiff has not presented any evidence showing that not having these two items implicates the minimal civilized measure of life necessities. He does not allege that he was not otherwise cared for.

THE COURT: Or puts him at risk of any kind of serious harm.

Anyway, Mr. Matthews, I know you gave this one a shot, but anything you want to add?

MR. MATTHEWS: Nothing further than what was stated in my response, Your Honor.

THE COURT: Okay. Fair enough. Well, you did your best. Quite frankly, this shouldn't have made it through threshold review -- that's my opinion -- not on these two counts. Reasonable minds disagree. That's my how my mind sees it, is it shouldn't have made it through that piece of the case, but it did.

There are two issues here. Obviously, not providing petroleum jelly or baby powder does not in any way implicate the basic civilized needs that the plaintiff in this case is required to have or is required to be met. In addition to that, there's just no way you can say that there's any issue concerning substantial risk of serious harm for failure to provide each of these or either of these items. So, for those two reasons, no reasonable jury could find that this is a violation of the Eighth Amendment. And, not only that, it's a clear case of qualified immunity on that issue as well.

Then, now we get to the First Amendment claim relating to -- I'm sorry. The same thing goes for copying costs. That has nothing to do with the Eighth Amendment. It's -- there's nothing that indicates that, again, by increasing the cost of copies, that he's not being provided minimal civilized measure of life's necessities, and there's no indication at all he faces substantial risk of harm. So, for that as well, summary judgment's granted as to Eighth

Amendment and on the basis of qualified immunity.

Okay. Next up is the First Amendment claim on petroleum jelly. No one has challenged his assertion at this stage of summary judgment that this is something that's a bona fide necessity for the plaintiff to practice his religion, that he needs the petroleum jelly and that the lotion that's available he can't use. And, so, that would be a factual question in trial, but that's not the basis upon which it's being challenged. It's -- the petroleum jelly was made unavailable for a period of time to all inmates. It's not clear to me how long it was unavailable -- maybe you all can enlighten me on that -- but it is again now. It seems that everyone's in agreement that it's available again now.

MR. MATTHEWS: To be perfectly frank, it was always available, it was just available through the healthcare unit. So, it wasn't available through commissary, but I think that depositions do show that there was access to it at all times, just at significantly increased cost.

THE COURT: And he's getting it through the commissary?

MR. MATTHEWS: I don't believe that he chose to do that, but that is what the evidence is, Your Honor, that it was available through that means.

THE COURT: So if he's getting it -- if he can get

it at the commissary, how can you say that not getting it at the healthcare unit was -- there's a -- that there's some sort of a security issue?

MR. ANKNEY: Your Honor, it's my understanding that it was removed from commissary to prevent the widespread --

THE COURT: Well, Mr. Matthews says it was always available at the commissary. That's -- I mean that's not the evidence that is in the record though.

MR. MATTHEWS: I believe that's in the depositions, Your Honor. I didn't bring the whole deposition. I can find the page.

THE COURT: Well, that's not how the issue was framed for the Court. The way it was framed for me is, he couldn't get it; now he can get it at the commissary.

MR. MATTHEWS: That is certainly true. It was removed from the commissary, then it was returned to the commissary some period of time later. So while it was removed from the commissary, there was still some access through the healthcare unit during that time it was removed from the commissary.

THE COURT: Okay. So it was --

MR. MATTHEWS: -- if the doctor would have prescribed it for him.

THE COURT: So I mean you can get it from the healthcare unit if a doctor prescribes it still --

MR. MATTHEWS: Yes, sir.

THE COURT: -- and you could get it then, but that's just for medical needs. This guy wants it for religious purposes.

MR. MATTHEWS: That's true.

THE COURT: Okay. So the issue of -- you know, there's lots of things that you can get through the healthcare unit that you can't get at the commissary that would cause security issues if they were available at the commissary. Like narcotics is the prime example.

So -- all right. Then this is how the Court understood it: It wasn't that you could never get it from the com -- from the healthcare unit; it's, it was removed from the list of items you could receive at the commissary and now it's back on the list of items you can receive from the commissary.

MR. MATTHEWS: Yes, sir.

THE COURT: So the reason provided for it being removed from the list of items from the commissary was the concern that it could be used for starting a fire in your cell and as a fuel, which I looked this up. So you can't burn a lump of petroleum jelly. I mean it's not a flammable -- like you put a lump and you put a blowtorch on it, apparently it doesn't do anything. If you like put -- take a cotton ball and you soak it in petroleum jelly, then

it makes it burn for a considerably longer period of time because, as it vaporizes, it burns slowly. That's what I understand. This is -- you know, this is on the internet though, but it makes sense. In any event, that's why they removed it. Why did they put it back on the list?

MR. ANKNEY: I do not know the answer for that, Your Honor. I don't know why they put it back on, to be honest with you. I don't think any of these people were responsible for doing that, putting it back on the commissary.

THE COURT: Okay. So I mean there can be no doubt they removed it for everybody from the commissary, so there wasn't any discriminatory intent. They stated a reason. It may not have been a great reason but it was a reason that had some basis. They put it back on. So whatever the reason was, they later decided differently. But that's not the standard. I mean did they have -- is there any basis at all to say that they didn't have a legitimate penological objective when they took it off, knowing that, yes, it can be used -- you have to do it in conjunction with something else -- as a fuel?

MR. MATTHEWS: The only evidence, Your Honor, is that, because they put it back on relatively quickly, there's an inference that they took it off for some other reason. If it really was a security risk -- deposition

testimony shows that they never said that that security risk had gone away. They were unsure why it had been returned to the commissary but they believe it may be because -- or there was some suggestion that it was because of the number of grievances that were filed regarding the removal of petroleum jelly.

THE COURT: But that's an okay -- I mean, you know, it's like, *Look, we're going to have a riot on our hands if we don't put petroleum jelly back in the commissary. We're better off just taking our chances that somebody could make a ball of cotton burn slowly for a few minutes than not having it.*

They're allowed to make those kinds of decisions.

MR. MATTHEWS: Other than that, I'm not aware of anything that indicates --

THE COURT: Okay. All right.

So on the damages part of that claim, there's -- I think there isn't any evidence that at the time they made the decision to take it off -- the mere fact that it was put back on doesn't mean that they didn't have a legitimate security interest when they took it off. There's no other explanation. It may not have been a security interest that overrode other security interests, like discontent in the prison. Or, maybe upon further review they realized, you know what, the chances that somebody actually is going to

use this as an accelerant is pretty minimal because it's not like rocket fuel or gasoline or anything of the sort, it's pretty low-grade.

As I said, I can only find this one -- you know, this explanation for how it could be used to kind of make something burn slower, to use it as a fire starter, but -- so the mere fact that it's put back on is not a sufficient reason to -- when all of the testimony consistently was, we put it -- we took it off the list at the time for security reasons. And it was not done for just certain people; it was across the board it was taken off. It was left available for health reasons but that's the case for a lot of things.

I mean if it's in the commissary, it's widely available, and so if they had a worry or a concern or some indication that people were using this as fuel and then maybe learned otherwise, then that's a sufficient, legitimate reason. Those are the -- that's the bases upon which summary judgment is sought.

And there's no contradictory evidence. So on that basis, no reasonable jury could find, based on this evidence, even in the light most favorable to the plaintiff, for the plaintiff, and so summary judgment is granted. Furthermore, the qualified immunity would allow for it under these circumstances as well.

Now, here's the more complicated question. On the RLUIPA claim, it's been -- nobody's said that he doesn't need petroleum jelly. You know, we can -- as I -- I'm going to admit, it's an odd claim. I've never heard -- this is the only case I've heard of this before, but it hasn't been challenged on the basis that he doesn't have a bona fide reason for needing this for his prayer, and so then it hasn't been challenged on whether it's a substantial burden on him not to be able to use the petroleum jelly in advance of prayer.

The only basis upon which it's been challenged for RLUIPA is it's moot. And the question was asked: Why was it put back on the list? And I have no idea. So how can I conclude that it's moot, that there isn't -- you know, once the lawsuit goes away, as suggested, or just at some other point in the future, once these complaints go away, that they do the same thing. And maybe they can, but not -- they shouldn't be able to on the basis of mootness. He's still at the same prison, so shouldn't -- isn't there a factual question alone as to whether or not it's actually moot when we don't even know why it was put back on the list in the first place? And he's still at the same prison, and they could reinstitute the same policy, you know, with just a stroke of the pen.

MR. ANKNEY: Your Honor, the question is not

whether they can reinstitute the same policy with the stroke of a pen. The question is whether the plaintiff can make a reasonable showing that he will again be subject to the same illegality. In this case he hasn't presented any evidence to show that it will happen again or is even likely to happen again.

Similar situation, kind of similar case, *Jackson vs. Raemisch* -- can't pronounce that last word. But the plaintiff's RLUIPA claim was dismissed as moot when he had not worked in the kitchen where he alleged that he was subject to a policy that violated his exercise of religion for more than a year, and he had identified no reason why it's likely that he would end up working in the kitchen again.

Here, there's no evidence on the record that the plaintiff will again be subject to the deprivation of petroleum jelly.

MR. MATTHEWS: The only evidence is that the prison -- again, there's an inference like the prison has changed their mind. They took it away for a purported security reason; they put it back. There's no evidence they're not going to change their mind. Everybody testified, who was on the weapons task force, they believed it was still a security concern, that they wouldn't have recommended it be returned. The staff who then -- these

people on security task force ended up, some of them, going -- strike that.

Even speaking to the assistant wardens and wardens who served after that, they, again, couldn't remember why it was returned to the commissary, that they thought it was a security concern. If it was a security concern they were unclear why it had been returned to the commissary. And so I think the testimony is that they're unsure why it's there. And I think that if evidence --

THE COURT: Is there reasonable inference that it's just waiting out the lawsuits?

MR. MATTHEWS: Absolutely, Your Honor.

THE COURT: I mean isn't it a reasonable inference to require the Court to hear some evidence about it? I mean you -- I'm not saying you're not right, but I mean this is summary judgment. Shouldn't he be allowed to present that to the Court, the mootness question?

MR. ANKNEY: Your Honor, at the summary judgment stage the plaintiff has not provided any evidence that it's reasonably likely that he will be subject to this again though.

THE COURT: Everybody says it should still be a policy and no idea why it was taken off.

MR. ANKNEY: Kimberly Butler and Richard Harrington were, I believe, the wardens and/or assistant wardens at

that time. They're no longer even employed by the Illinois Department of Corrections. And I believe in the testimony of the other individuals, that they have no control over whether petroleum jelly is at the commissary any more. So the extent they're suing any of these defendants in their official capacity --

THE COURT: No. We're talking -- look, we can all -- these aren't individual capacities. This is an official capacity claim now, so we actually have to replace -- it's Baldwin, and we're going to have to replace whoever --

MR. ANKNEY: Lashbrook.

THE COURT: Lashbrook is on the case. She's not warden any more, or is she?

MR. ANKNEY: Lashbrook is the warden currently.

THE COURT: Yeah. So it's just Lashbrook and Baldwin that are left. So it's official capacity, it's not individual -- there's not damages. It's -- what's going on is you've got everybody saying it still should be off the list for security reasons. And, you know, a reasonable showing doesn't mean you've got to be able to prove it at the summary judgment stage. It's, what are -- is there a chance that -- you know, reasonable chance that it would be returned from the list when the issue was complaints. Now, could it be complaints because we just have too many people

upset about it and we've decided that it's not as big of a security risk as these guys are telling us, or is it, well, let's see how the lawsuits pan out so then we'll get rid of it, we'll take it back off the list. I mean that's the concern, is -- that's why we talk about mootness as not necessarily being resolved just because in a particular case it's no longer going on because -- if it's capable of repetition.

MR. ANKNEY: Your Honor, if it's the plaintiff's position that there's an inference raised by the filing of lawsuits and then the subsequent allowing for petroleum jelly to be sold at commissary, I don't see any evidence on the record showing that the petroleum jelly wasn't put back on commissary prior to lawsuits being filed. Certainly, for an inference to be raised, there would have to be evidence that the lawsuits were filed prior to the petroleum jelly being returned to commissary.

THE COURT: Well, not necessarily. I mean if everybody's grieving it, you pretty much know what's coming next.

MR. ANKNEY: I don't think that's true in all circumstances, Your Honor.

THE COURT: It's not in all circumstances but it's true in a lot of circumstances. We both can vouch for that. You and I can both vouch for that.

MR. ANKNEY: Yes, Your Honor, there's certainly an inference that they returned it in response to grievance.

THE COURT: That's what I'm saying. Shouldn't we have a trial on that? I mean, the fact that there are multiple inferences that are possible, is there a reasonable probability that this could be repeated?

MR. ANKNEY: Your Honor, the entire argument that this isn't moot is based purely on speculation and no actual evidence.

THE COURT: There's evidence that it was all taken off for security reasons, and then the outcry is what caused it to go back on. That's not speculative.

MR. ANKNEY: Your Honor, I don't believe anybody testified that they actually had knowledge that that is the the reason why it went back on. They were speculating that that is why it went back on the commissary list.

THE COURT: That they were -- that the individuals who were sued in an individual capacity are speculating that?

MR. ANKNEY: Yes, Your Honor.

THE COURT: Why would they have been speculating that?

MR. ANKNEY: Because they were asked a question, I suppose, Your Honor.

THE COURT: Do you have any idea why it was put

back on?

MR. ANKNEY: I do not know, Your Honor.

THE COURT: I mean somebody made the decision to do it.

MR. ANKNEY: I would imagine so.

THE COURT: You know, I think, absent any explanation whatsoever, there's multiple inferences that can be drawn, and that's a reasonable inference is that it has to do with the complaints and the potential or the filing of a lawsuit. I don't -- what was the timeframe between --

MR. ANKNEY: I don't know, Your Honor.

THE COURT: Yeah. You know, I would -- I think that, under these circumstances, the plaintiff's raised, you know, a reasonable inference, and --

MR. ANKNEY: Your Honor, if I could just for a second. Claims -- on numerous occasions plaintiffs have been transferred from one facility to another, and their claims have been ruled as dismissed as moot because they could not show a reasonable likelihood that they would be retransferred back to that other prison. This is the same situation as that.

THE COURT: I don't think so.

MR. ANKNEY: Well, there's an inference that we just transferred him in order to wait out the lawsuit and after the lawsuit was gone we can transfer him back.

THE COURT: This plaintiff?

MR. ANKNEY: Well, no. I'm saying in situations where inmates are transferred and their rights are no longer being violated, allegedly. It's the same situation that you could raise an inference there that we just transferred them for the purposes of waiting out the lawsuit, but those plaintiffs have still been dismissed as moot because they're no longer --

THE COURT: Some have, not all, but yeah.

MR. ANKNEY: They're no longer subject to the deprivation, allegedly.

THE COURT: Right. I mean there's no doubt he's not being subject to the deprivation. The question is: Is it going to be repeated in the future? Is there a reasonable probability it will be? And he's raising an inference. I mean I don't have any evidence whatsoever as to why it was put back on, none. And so why isn't the inference that it was in response to complaints about it where, in the face of all of this evidence and testimony that, hey, it's still a security risk. We have no idea why they did it, but it seems like it was probably because people were complaining about it.

MR. ANKNEY: Your Honor, even if there's an inference raised that it was returned to the commissary because people were complaining about it, that doesn't

establish a reasonable showing that it will be removed from commissary again at any point in time.

THE COURT: It doesn't?

MR. ANKNEY: No.

THE COURT: According to who?

MR. ANKNEY: There needs to be some --

THE COURT: That's your view of it, obviously.

MR. ANKNEY: Yes, Your Honor, it is my view of it. I would just say that it's not defendant's burden to show that he won't again be subject to this alleged illegality. It's plaintiff's burden to show that he will again be.

THE COURT: Not that he will; that there's a reasonable probability that he will. Reasonable probability, is that a preponderance of the evidence? I don't think so. Probability -- reasonable probability sounds more like a probable cause showing. So, that's true, he's got to make that showing. Now, if he does so, probably looking at the other reasons for it becomes a necessity if we're going to truly evaluate the issue of mootness.

MR. ANKNEY: Your Honor, it appears that -- oh, wait. Never mind. Had the wrong document.

THE COURT: Anything else?

MR. ANKNEY: I don't believe so, Your Honor.

THE COURT: Okay. Well, under these circumstances -- I understand the defendant's argument but

it's almost that unless they -- there is affirmative evidence that it's going to happen again, that that's not a sufficient showing. And it's a reasonable probability; doesn't have to be more probable than not. It's in the light most favorable to the plaintiff.

This is at the summary judgment stage. At the summary judgment stage, the reasonable inference is that it could happen again. And, so, in the light most favorable to the plaintiff, the Court's going to let that through on the issue of mootness, which is the only issue that's been raised. It may be moot, but on the record before the Court I can't make that call yet, so I'm going to have to hear more before deciding whether it's moot.

And, you know, it could be challenged on other grounds, too, like whether or not he really needs the petroleum jelly to practice his religion. I don't know that that's accurate as well. But if we want to just have a bench trial on the issue of mootness, we can do that. Shouldn't be hard. Should take us about one or two hours at most, I would think. So that's what's left in the case.

Anything else before we pick a date for the bench trial on mootness? You're awfully frustrated over there, Mr. Ankney. You got your calendar?

MR. ANKNEY: No, I do not, Your Honor. Don't we already have a trial scheduled in this case?

THE COURT: I don't know.

MR. ANKNEY: I believe we already have one set.

MR. MATTHEWS: There is a trial set, I believe as well. I believe it's September.

MR. ANKNEY: I don't know.

THE COURT: We need to replace Butler in her official capacity with Lashbrook.

MR. ANKNEY: Yes, Your Honor.

THE COURT: So just do a substitution, and so all it will be is Lashbrook and Baldwin in their official capacity.

Oh, okay, yeah. It's not set. When the case got fully referred it was -- the jury trial for October was canceled, so let's just pick a date for the bench trial. This may be little soon but I can do it the week of -- looks like the week of October 13th or 14th. It should only take a day.

MR. MATTHEWS: October 13th, 14th is a Saturday and Sunday.

THE COURT: I'm sorry. August 13th and 14th. Or the week after that, which might be better, the week of the August 21st, 22nd. We could use any of those three days. Any of those three days work, the 20th, 21st, or 22nd?

MR. MATTHEWS: I think I can do any of those days, Your Honor.

MR. ANKNEY: Same, Your Honor.

THE COURT: Any preference?

MR. ANKNEY: Twenty-first.

THE COURT: Sounds good. Twenty-first at 9 a.m. for a bench trial.

Let's talk about -- are we going to just do it on the issue of mootness? You need to go look at this maybe and find out.

MR. ANKNEY: Yes, Your Honor, I should look at it.

THE COURT: Because I mean if all you want to do is try it on mootness that's going to be pretty quick because he isn't going to have anything to offer other than when -- you know, when did it get put back on the list and who decided to?

MR. ANKNEY: Yes, Your Honor. I think we'd probably also, without having looked at it more thoroughly preparing for a bench trial, challenge the substantial burden aspect as well.

THE COURT: Okay. Well, that will mean we'll need his testimony.

MR. ANKNEY: Yes, Your Honor.

THE COURT: And so why don't we -- so we'll writ the plaintiff for the 21st at 9 a.m. Plaintiff will have to testify, obviously. Is there anybody else he's going to want?

MR. MATTHEWS: I'll have to review the file.

THE COURT: All right. So why don't we have a telephone final pretrial conference, unless you all want to come in, but I think for this we can do it by telephone.

But get me a final pretrial order. That way you can talk about your witnesses. If he's going to address substantial burden and mootness, then it may just be the plaintiff testifying, and then it might be that we all -- that it can be agreed on, here's when it was put back on the list, and then whoever -- I don't know if you've got a chaplain. I don't know that a chaplain's going to be able to do it, say anything about, but that's --

MR. ANKNEY: I think actually not. I don't think they have any control over that.

THE COURT: So really it will be the question of why they put it back on, you know, that decision-making process. And if it's, you know -- and if -- so then I'll be evaluating his testimony for whether or not he really needs the stuff anyway, and then the issue of mootness. And, you know, that's a close call, there's no doubt about it, at least from my point of view. So I'm interested to hear what the explanation is. So -- but you're going to need to tell them, you know, who the witnesses are that are going to be on that issue of explaining. I mean it might be the warden, I would assume, but I don't know. Somebody had to make the

decision to put it back on, and --

MR. ANKNEY: That would stand to reason.

THE COURT: Yeah. And if -- you know, all right. If we took it off for security reasons, why did we put it back on? Somebody went through that process of, you know, making that decision.

And I guess establishing when it was taken off the commissary would be another -- you know, just agreeing, here's the date. If you stipulate to that then we don't need to hear evidence about it. This should take us, at most, two hours. And then I might be able to give you a decision that day after hearing the testimony. Probably will be able to. It's fairly straightforward, so we should be -- I'm thinking we should be able to be done. Now, if I decide, well, it's not moot and I feel like it needs to issue an injunction possibly, it won't be that day because we'll have to dig in a little deeper. But if I feel like it's moot, that will be pretty easy.

All right. So as far as then getting back together for a telephone conference, why don't we say the week of the 6th. So here's a few possibilities: We could do it on August 8th at --

MR. ANKNEY: I'll be in trial from the 6th through the 8th, Your Honor.

THE COURT: Okay. How about on the 9th at

3:15 p.m.?

MR. ANKNEY: As long as my trial's finished by then, that should be fine.

THE COURT: Right. If you're in trial we won't -- just call and let us know or have somebody call us and let us know and we'll do it the following week or we'll do it the next day or we'll wait.

MR. MATTHEWS: That's fine with me, Your Honor.

THE COURT: All right. August 10th, 3:15 p.m. If you're going to be in trial that week --

MR. MATTHEWS: Tenth or 9th?

THE COURT: I'm sorry. August 9th, 3:15 p.m. for a telephone final pretrial conference. But if you're going to be in trial, then get together on the final pretrial order the week before. It should be a pretty straightforward final pretrial order. You guys just need to think about, all right, who are we going to need? And it might just be your guy plus the video. You know, if you want to present folks by video -- and you can do the warden. If she's going to testify, and I'm talking about Lashbrook, you can have her appear by video, too. She doesn't need to be here. That's up to you guys.

Okay? See you then. Talk to you in a couple weeks. Thanks.

(Proceedings adjourned at 9:48 a.m.)

REPORTER'S CERTIFICATE

I, Laura A. Esposito, RPR, CRR, CRC, Official Court Reporter for the U.S. District Court, Eastern District of Missouri, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 25 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 30th day of September 2019.

Laura A. Esposito

LAURA A. ESPOSITO, RPR, CRR, CRC

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

April 21, 2020

By the Court:

MARLON L. WATFORD, Plaintiff-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 19-3221 v.	] Illinois, Eastern Division.
OFFICER MANNING, et al., Defendants-Appellees.	] No. 1:19-cv-03868] Virginia M. Kendall,] Judge.

ORDER

On consideration of the Motion to Consolidate Appeals filed by appellant on April 20, 2020,

IT IS ORDERED that the motion is **DENIED**. However, the clerk is **DIRECTED** to relate Appeal No. 18-3736 to this appeal on the court's docket.

Appendix
I

Additional material from this filing is available in the Clerk's Office.