

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

NATHANIEL BAGWELL, : C.A. No. 06C-01-014 THG

Plaintiff, :

v. :

THOMAS L. CARROLL, WARDEN; :

DAVE PIERCE, DEPUTY WARDEN; :

BETTY BURRIS, DEPUTY WARDEN; :

PORTER, S/LT. CLASSIFICATION; :

CINDY ATALLIAN, CLASSIFICATION; :

JAYME JACKSON, CLASSIFICATION; :

TODD KRAMER, COUNSELOR; :

PROFACI, S/LT.; :

BOONE, LT.; :

B. WILLIAMS SR. S/LT. HEARING OFFICER; :

HAZZARD, CAPT.; :

LARRY SAVAGE, DISCIPLINARY :

HEARING OFFICER; :

ANTHONY RENDINA, HEARING OFFICER; :

WILFRED BECKLES, SGT; :

FAUST, SGT; :

MARCELLO T. RISPOLI, S/LT.; :

RODDEN, LT.; :

STANLEY TAYLOR, COMMISSIONER OF :

DELAWARE PRISONS; :

ROSALIE VARGAS, C/O; :

TRADER, SGT.; :

RONNIE DRAKE; :

HOLMAN, MAJOR; :

JEFFREY HANSEN, C/O; :

M. McCREANOR; :

KENT A. JORDAN, DISTRICT COURT JUDGE; :

DANYE, NURSE; :

JANE BRADY, ATTORNEY GENERAL FOR :

THE STATE OF DELAWARE; :

TIM MARTIN, LAW LIBRARIAN; :

TAYLOR, S/LT.; :

JENNY HAVEL; :

CPL.L.M. MERSON; AND :

VALLIN, in their individual and official capacities, :

Defendants.

## ORDER

1) Plaintiff Nathaniel Bagwell (“Bagwell”) has filed a complaint against the above-named defendants which, to date, he has amended twice. Currently pending before the Court are Bagwell’s motion to proceed in forma pauperis, a request that the Court enter an order allowing him to be a live organ donor if it requires him to pay costs and fees, and a request that the Court appoint counsel to represent him in this litigation.

2) The complaint in this action seeks redress for numerous wrongs Bagwell claims he suffered at the hands of the various defendants on different occasions. As Judge Sleet has noted, “Bagwell is a prolific, and consistently unsuccessful, prison litigator.” Bagwell v. Williams, D. Del., Case No. 99-142 GMS, Sleet, J. (Jan. 31, 2002) at 2. Although the incidents alleged to have occurred in this complaint are different from those on which he based previous lawsuits, most of his claims in this complaint touch upon the same topics the prior lawsuits addressed: retaliation, classification issues, access to the bottom bunk, the taking of personal items, access to the courts. See Bagwell v. Prince, Del. Supr., No. 141, 1996, Hartnett, J. (Aug. 9, 1996); Bagwell v. Brewington-Carr, D. Del., C.A. No. 97-321-GMS, Sleet, J. (April 27, 2000), aff’d, 2002 U.S. App. LEXIS 9273; Bagwell v. Oberly, D. Del., C.A. No. 90-408-SLR, Robinson, J. (January 14, 1993).

3) A number of Bagwell’s previous claims have failed as a matter of law. See Bagwell v. Prince, Del. Supr., No. 141, 1996, Hartnett, J. (Aug. 9, 1996); Bagwell v. Brewington-Carr, D. Del., C.A. No. 97-714-GMS, Sleet, J. (Aug. 25, 2000); Bagwell v. Brewington-Carr, D. Del., C.A. No. 97-321-GMS, Sleet, J. (April 27, 2000), aff’d, 2002 U.S. App. LEXIS 9273; Bagwell v. Oberly, D. Del., C.A. No. 90-408-SLR, Robinson, J. (January 14, 1993). The District Court also

noted in Bagwell v. Williams, *supra*, that the District Court, in decisions which are not available to this Court, dismissed three other cases for failure to state a claim: Bagwell v. Lt. Paul Walker, C.A. No. 86-11-MMS (D. Del. 1988); Bagwell v. Watson, et al., C.A. No. 90-471, JJF (D. Del. 1991); and Bagwell v. Korbus, et al., C.A. No. 92-557-LON (D. Del. 1993). As the Court explained in Bagwell v. Williams, *supra* at 5-6:

The “three strikes” provision of the Prison Litigation Reform Act, § 1915(g), provides that “in no event” shall a prisoner be permitted to proceed without prepayment under this Section if he has pursued three or more actions or appeals in federal courts which were dismissed on grounds that they were frivolous, malicious, or failed to state a claim upon which relief could be granted. The only exception to this Section is for prisoners who are under an imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

It is clear that Bagwell has “struck out” within the meaning of Section 1915(g).  
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4) Delaware’s Legislature passed legislation similar to that in the Prison Litigation Reform Act. 73 Del. Laws, c. 276 (2002). In 10 Del. C. § 8804(f), it is provided as follows:

In no event shall a prisoner file a complaint ... brought in forma pauperis if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed. Complaints or appeals therefrom dismissed prior to the enactment of this section shall be counted for purposes of determining the number of previously dismissed proceedings.

5) Since Bagwell has had three or more actions dismissed because they failed to state a claim upon which relief could be granted, he may not proceed in forma pauperis. Thus, the motion to proceed in forma pauperis is DENIED.

6) In order for this action to proceed, Bagwell must pay a filing fee in the amount of

\$175; the service fees for the Sheriff on New Castle County in the amount of \$225; and the service fees for the Sheriff of Kent County in the amount of \$35.00. Bagwell must pay these sums on or before **May 31, 2006**, or the matter will be dismissed.

7) In addition to paying the fees and costs set forth above, Bagwell must provide copies of the complaint as well as copies of his “Motion for a Protection Order on Personal Legal Documents and Exhibits” and “Motion Concerning Medical Deliberate Indifference and Discrimination”<sup>1</sup> for **each** defendant named to be served. These copies must be provided on or before **May 31, 2006**, or the matter will be dismissed.

8) Bagwell has explained, in a letter dated January 1, 2006, that the only way he can raise money to pay fees and costs is by being a live organ donor. He asks that the Court enter an order allowing for such. This Court DENIES this request out of hand.

9) Bagwell also asks, in his complaint, that the Court appoint counsel to represent him in this matter. There is no right to the appointment of counsel in civil litigation. In re the Estate of Hall, Del. Supr., No. 383, 2004, Berger, J. (Aug. 26, 2005). This request is DENIED.

IT IS SO ORDERED THIS \_\_\_\_\_ DAY OF APRIL, 2006.

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JUDGE

cc: Prothonotary's Office  
Nathaniel Bagwell  
Ophelia Waters, DAG

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<sup>1</sup>This document does not in any way establish Bagwell is in imminent danger of serious physical injury. In it, he seeks access to the bottom bunk because of cataract issues.