

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| STEVEN CURTICIAN,                     | ) |                              |
|                                       | ) |                              |
| Plaintiff,                            | ) | Case No. 1:07-cv-286-SJM-SPB |
|                                       | ) |                              |
| v.                                    | ) |                              |
|                                       | ) |                              |
| UNIT MANAGER KESSLER, <i>et al.</i> , | ) |                              |
|                                       | ) |                              |
| Defendants.                           | ) |                              |

**ORDER**

Plaintiff's complaint in this civil rights action was received by the Clerk of Court on October 17, 2007 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. In a Memorandum Judgment Order entered on April 25, 2011 [90], this Court granted, in part, the Defendants' motion for summary judgment [73], with the result that:

1. Judgment was entered in favor of Defendant Kessler with respect to Plaintiff's retaliation claims insofar as they were premised upon Defendant Kessler's alleged involvement in: (i) dismissing all of Plaintiff's grievances "out of hand"; (ii) conducting investigations and illegal cell searches; and (iii) moving Plaintiff from block-to-block and cell-to-cell; and
2. Judgment was entered in favor of Defendant McConnell with respect to Plaintiff's retaliation claim insofar as it related to Defendant McConnell's alleged involvement in filing an allegedly false misconduct against Plaintiff.

Defendants' motion for summary judgment was denied with respect to: (i) Plaintiff's Eighth Amendment failure-to-protect claim against Defendant Kessler, and (ii) Plaintiff's

Eighth Amendment retaliation claim against Defendant Kessler insofar as those claims related to Plaintiff's placement in inmate Stiefel's cell on October 27, 2008.

Plaintiff has since filed a document styled "Motion to Alter or Amend Judgement [sic] and to Hold Order of 4/25/11 in Abeyance Until Plaintiff has had Opportunity To [sic] File the Appropriate Appeals" [91]. Upon consideration of said motion and the Defendant's response [92] thereto, the Court finds that it is appropriate to grant Plaintiff's motion in part, inasmuch as there exists an issue of material fact relative to Plaintiff's retaliation claim against Defendant McConnell premised upon McConnell's alleged involvement in filing a false misconduct report against Plaintiff, making summary judgment on that claim inappropriate. Accordingly, the following order is entered:

AND NOW, *to wit*, this 3<sup>rd</sup> Day of June, 2011;

IT IS ORDERED that Plaintiff's Motion to Alter or Amend Judgement [sic] and to Hold Order of 4/25/11 in Abeyance Until Plaintiff has had Opportunity To [sic] File the Appropriate Appeals [91] be, and hereby is, GRANTED IN PART to the extent it relates to his claim that Defendant McConnell retaliated against him by filing a false misconduct report against him. In all other respects, Plaintiff's motion is DENIED.

IT IS FURTHER ORDERED that this Court's prior Memorandum Judgment Order entered on April 25, 2011 be, and hereby is, AMENDED such that the Court's prior entry of judgment in favor of McConnell on the foregoing retaliation claim is VACATED.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

cm: All parties of record  
U.S. Magistrate Judge Susan Paradise Baxter