

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

PETER J. LONG,

Plaintiff,

v.

OPINION AND ORDER

16-cv-149-slc

MICHAEL L. HAMMER, RONALD BREWER,
CHAD CLINE, LISA PETTERA,
MANDY MATHSON and TIM HAINES

Defendants.

In this civil lawsuit, *pro se* plaintiff Peter J. Long contends that staff at the Prairie Du Chien Correctional Institution violated his constitutional rights by interfering with his ability to access the courts, retaliating against him and failing to protect him from harm. Long has paid the \$400 filing fee. The parties consented to magistrate judge jurisdiction, and on June 20, 2016, this case was reassigned to me. (Dkt. 6.) Because Long is incarcerated, however, his complaint is subject to the Prison Litigation Reform Act, which requires the court to screen the complaint to determine whether any portion is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After reviewing his complaint, I conclude that Long may proceed with a retaliation claim against all defendants. His remaining claims, however, will be dismissed for failure to state a claim upon which relief may be granted.

ALLEGATIONS OF FACT¹

¹ In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the facts above based on the allegations in Long's complaint.

Plaintiff Peter Long is an inmate at Thompson Correctional Center in Deerfield, Wisconsin. At all times relevant to his complaint, however, he was incarcerated at Prairie Du Chien Correctional Institution (“PDCI”), where all defendants are employed. Defendant Michael Hammer is the staff librarian; Ronald Brewer and Chad Cline are education directors; Lisa Pettera is the program supervisor; Mandy Mathson is an inmate complaint examiner; and Tim Haines is the warden.

In April 2014, Long was defending a civil foreclosure action in state court concerning an apartment building he owned. In that case, he filed counterclaims against Acquired Capital II, L.P. for breach of good faith and fair dealing, consumer protection laws, federal banking laws and other state laws. Long wished to send press releases to several newspapers regarding the lawsuit, as he believed his claims implicated unlawful actions of U.S. Bank National Association that would be of public interest. He also believed negative publicity from the press release would have pressured Acquired Capital to settle with him.

Long drafted letters regarding his counterclaims to the “Legal/Business Editor” of the Wall Street Journal, Milwaukee Journal Sentinel, The Post-Crescent, Capitol Newspapers, USA Today and Gannet Co. Inc. The letters, which Long attaches to his complaint (dkt. #1-3), described his background, education, history of arrests, the foreclosure action and his counterclaims. The letter stated that a copy of the counterclaim is enclosed for “use in preparing an article about by negative business experience with U.S. Bank, N.A. . . .” (*Id.*)

Long asked Hammer to print 6 copies of the letter to be mailed to the various news organizations. Hammer refused, however, on the ground that inmates could use the prison computers to create and print “legal” documents, but not personal documents. Hammer

concluded that, although associated with Long's legal proceedings, the proposed press releases were not "legal" in nature, but were actually personal. Long filed an inmate complaint, challenging Hammer's refusal to print the letters. Defendant Mathson dismissed the complaint and Haines affirmed dismissal, agreeing with Hammer that the letters were not "legal" documents. Long's counterclaim against Acquired Capital was ultimately dismissed and he later sold his apartment complex at less than the appraised value.

Long alleges that in the months following his inmate complaint regarding Hammer's refusal to print his documents, Hammer began limiting his library time, harassing him and treating him with disrespect. On several occasions, Hammer lost his temper and yelled at Long for no good reason. On another occasion, Hammer forced Long to pay for additional copies needed as the result of a library clerk's mistake. Each time Hammer harassed Long, Long filed an inmate complaint, making defendants Brewer, Cline, Pettera, Mathson and Haines aware of the harassment. Each time, his complaints were dismissed by Mathson and Haines. On multiple occasions, Long's inmate complaints were dismissed on the ground that the institution was investigating the allegations outside the inmate complaint review process. However, Hammer's harassment of Long continued.

OPINION

Plaintiff raises three claims in his complaint: (1) denial of access to the courts; (2) retaliation; and (3) failure to protect from serious harm. Each claim is discussed below:

I. Access to Courts

Plaintiff first contends that defendants violated his right of access to the courts by preventing him from printing the letters he had written to news organizations regarding his state foreclosure case. He argues that if he had been allowed to print these letters, he would have succeeded on his counterclaims or achieved a settlement with Acquired Capital II, L.P.

These allegations do not support a claim that he was deprived of his constitutional right of access to the courts. A prisoner's constitutional right to access the courts is limited to the ability to file claims challenging a sentence or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977). Plaintiff's foreclosure action was not related to his sentence or conditions of confinement and, therefore, his inability to use prison computers to create and print letters regarding that action does not state a claim for denial of access to the courts.²

II. Retaliation

Plaintiff contends that Hammer retaliated against him for filing various grievances against him. He also contends that defendants Brewer, Cline, Pettera, Mathson and Haines

² The court notes the plaintiff has alleged only that the prison prohibited him from using prison computers to create and print his proposed press releases. He has not alleged, for example, that the prison would have prohibited him from creating and mailing such letters if they had been handwritten or typed with a typewriter. Such interference, if it had occurred, could have amounted to interference with plaintiff's First Amendment right to send and receive mail. *Rowe v. Shake*, 196 F.3d 778, 782 (7th Cir. 1999).

were aware of Hammer's pattern of retaliation but took no steps to prevent it from occurring. "An act taken in retaliation for the exercise of a constitutionally protected right violates the Constitution." *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000). Plaintiff must plead three elements in order to state a claim for retaliation. He must: (1) identify a constitutionally protected activity in which he was engaged; (2) identify one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity in the future; and (3) allege sufficient facts that would make it plausible to infer that plaintiff's protected activity was one of the reasons defendants took the action they did against him. *Bridges v. Gilbert*, 557 F.3d 541, 556 (7th Cir. 2009) (citing *Woodruff v. Mason*, 542 F.3d 545, 551 (7th Cir. 2008)); *Hoskins v. Lenear*, 395 F.3d 372, 375 (7th Cir. 2005).

Plaintiff's allegations, which at this stage the court must accept as true, are sufficient to state a claim against all defendants. His allegations support an inference that Hammer engaged in repeated harassment after plaintiff filed grievances against him, and that the other defendants failed to intervene to stop Hammer's retaliation, despite being asked by plaintiff repeatedly to do so.

II. Eighth Amendment Failure to Protect

Plaintiff's final claim is that defendants Brewer, Cline, Pettera, Mathson and Haines failed to protect him from a substantial risk of serious harm, in violation of the Eighth Amendment. The Eighth Amendment requires that prison officials "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-527 (1984)). To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a "substantial

risk of serious harm” and (2) the prison officials identified acted with “deliberate indifference” to that risk. *Farmer*, 511 U.S. at 834.

Plaintiff’s allegations do not state an Eighth Amendment claim against any defendant. None of his allegations suggest that he faced a substantial risk of serious harm from Hammer or anyone else. Although he alleges that Hammer yelled at him on a number of occasions, he does not suggest that he ever feared for his physical safety or that he was physically or psychologically threatened by Hammer or anyone else. He also does not suggest that any of the other defendants knew that plaintiff faced such a risk or deliberately disregarded such a risk. Therefore, plaintiff may not proceed against any defendant on an Eighth Amendment claim.

ORDER

IT IS ORDERED that:

1. Plaintiff Peter Long is GRANTED leave to proceed on a claim that defendant Michael Hammer retaliated against him and defendants Ronald Brewer, Chad Cline, Lisa Pettera, Mandy Mathson and Tim Haines failed to intervene to prevent or stop the retaliation from occurring.
2. Plaintiff is DENIED leave to proceed on any other claim.
3. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff’s complaint if it accepts service for the defendants.
4. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court’s copy that he has sent a copy to defendants or to the defendants’ attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 21st day of June, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge