

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 4, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1496

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

THOMAS W. REIMANN,

Plaintiff-Appellant,

v.

**RUSSELL LEIK, STEWART SIMONSON,
ROBERT KENT and PATRICK PFISTER,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Cane, P.J., Myse and Carlson, JJ.

PER CURIAM. Thomas Reimann appeals a summary judgment dismissing his civil rights action against several prison system officials. He argues that the trial judge should have recused himself and that outstanding issues of material fact preclude summary judgment. We conclude that summary judgment is not appropriate for one of Reimann's causes of action. We reject the remaining issues raised on appeal. Therefore we affirm in part, reverse in part and remand for further proceedings.

Reimann was incarcerated at the Green Bay Correctional Institution (GBCI) from 1990 until he was transferred in 1995. In 1992, Reimann was labeled a security risk after an individual incarcerated in the Dane County Jail informed police that he was aware that Reimann was planning to escape from custody during one of his excursions from the prison. To substantiate this claim, the informant, posing as Reimann's attorney, telephoned Reimann and engaged in a conversation that suggested an escape plot. Throughout his time at GBCI, Reimann filed many lawsuits on his own behalf and assisted other inmates in filing lawsuits. Reimann also made numerous open records request for other inmates' criminal records. Shortly after filing a lawsuit against Authorized TV, Reimann was transferred to another prison.

Reimann's complaint alleges that Security Director Kent, Department of Corrections Classification Chief Leik, and other prison personnel violated his First Amendment rights by interfering with his ability to be a "jailhouse lawyer," unlawfully opened and inspected his incoming mail including letters from attorneys and courts, falsified his prison records and transferred him to another prison in retaliation for filing the lawsuit against Authorized TV.¹ The trial court entered summary judgment dismissing all claims.

Section 802.08, STATS., provides that summary judgment shall be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Initially, summary judgment review requires an examination of the pleadings to determine whether a claim has been stated and whether a material issue of fact is presented. *Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473, 476 (1980). If the complaint states a claim and the pleadings show the existence of factual issues, the court examines the moving party's affidavits or other proof to determine whether the moving party has made a prima facie case for summary judgment. *Id.* To make a prima facie case for summary judgment, a moving defendant must show a defense that would defeat the plaintiff's claims. *Id.* If the moving party has made a prima facie case for summary judgment, the court must examine the affidavits and other proof of the opposing party to determine whether there exists disputed

¹ Reimann also alleges other specific causes of action in his complaint that are not argued in his brief and will not be addressed on appeal.

material facts or facts from which reasonable alternative inferences may be drawn. *Id.*

Reimann contends that his First Amendment rights were violated when prison officials interfered with his ability to provide legal assistance to other inmates. An inmate does not have a constitutional right to provide legal assistance to fellow inmates. *Williams v. Nix*, 1 F.3d 712, 716 (8th Cir. 1993). Reimann alleges that other inmates are left without legal assistance in his absence. However, any cause of action regarding access to the courts would apply only if GBCI did not provide reasonable alternative assistance such as a law library. See *Shango v. Jurich*, 965 F.2d 289, 291 (7th Cir. 1992). All of Reimann's claims that relate to his ability to act as a jailhouse lawyer fail to state a claim for which relief can be granted and the trial court properly granted summary judgment dismissing them.

The trial court also properly dismissed Reimann's causes of action regarding inspection of his mail. Administrative rules require prison staff to only open and inspect "legal" mail in the presence of the inmate. A violation of those rules does not constitute a violation of a prisoner's constitutional rights. See *Brewer v. Wilkenson*, 3 F.3d 816, 825 (5th Cir. 1993). Even opening "legal" mail does not necessarily implicate an inmate's right of access to the courts. See *Martin v. Brewer*, 830 F.2d 76, 78 (7th Cir. 1987); *Harrod v. Halford*, 773 F.2d 234, 235 (8th Cir. 1985), *cert. denied*, 476 U.S. 1143 (1986). The record contains no evidence that the incoming mail inspected outside of Reimann's presence consisted of nonpublic legal documents or caused specific prejudice in any of his lawsuits. Reimann has presented no evidence that the screening of his incoming mail for contraband caused him any specific harm.

Summary judgment is not appropriate to resolve Reimann's allegation that he was transferred in retaliation for a lawsuit filed against the owner of Authorized TV and that prison officials covered up the retaliatory transfer by falsifying his prison records. The complaint and an affidavit filed in opposition to the motion for summary judgment state that Kent is a friend or relative of the owner of Authorized TV. Reimann alleges that the owner made threatening remarks to Reimann demanding that he dismiss the lawsuit. The proximity in time between the filing of the lawsuit and the transfer would allow a reasonable inference that the transfer was retaliatory. While the defendants offer other reasons for the transfer, those reasons depend on the accuracy of the

prison records and create a question of fact regarding the defendants' motives or intent. Questions of intent are not properly decided on a motion for summary judgment. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183, 190, 260 N.W.2d 241, 244 (1977). Because material facts and disputing reasonable inferences are not properly resolved on summary judgment, we reverse the part of the judgment that dismisses the cause of action for retaliatory transfer and remand the cause for further proceedings.

Finally, there is no basis for Reimann's argument that the trial judge should have recused himself. Recusal is necessary only when a judge makes a determination that, in fact or in appearance, he cannot act in an impartial manner. *State v. American TV & Appliance*, 151 Wis.2d 175, 183, 443 N.W.2d 662, 665 (1989). The judge found that he was not partial and did not appear partial. Reimann's complaints reflect only his discontent with the judge's determinations made in his judicial capacity.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.