IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LARRY D. MARVEL, Plaintiff v. ROBERT SNYDER and BRUCE BURTON, Defendants	)	C.A. No. 99-442 GMS

MEMORANDUM AND ORDER

I. INTRODUCTION

On May 9, 2003, the court issued a memorandum and order in which it granted in part and denied in part the defendants' Motion *in Limine* (D.I. 143), and denied the parties' cross summary judgment motions (D.I. 106, 111). Presently before the court is the plaintiff's motion for reargument (D.I. 156) of the court's May 9, 2003 order. For the reasons that follow, the court will deny the motion.

II. PROCEDURAL BACKGROUND[1]

The plaintiff in this civil rights action, Larry D. Marvel, is incarcerated at the Delaware Correctional Center ("DCC"). In March of 1999, Marvel filed a personal injury lawsuit against Correctional Lieutenant Bruce Burton and the DCC. In the present suit, filed July 12, 1999, Marvel alleges that Burton and the warden of the prison, Robert Snyder, have retaliated against him for filing the personal injury suit. In his original complaint, the plaintiff alleges that this retaliatory conduct

[1] Because the facts of the case are detailed in the court's previous memoranda, the court will not reiterate them here except as applicable to the present motion.

comprised termination from his job with the prison's environmental crew and a search of his cell on May 31, 1999. The plaintiff seeks injunctive relief and monetary damages.

In a motion to amend the complaint filed November 15, 1999, Marvel sought to add information regarding a DCC disciplinary hearing. In an order dated July 24, 2001, the court granted the plaintiff's request to add such material to his complaint.

In a second motion to amend the complaint, filed July 24, 2000, Marvel sought leave to add allegations regarding a cell shakedown which occurred on July 2, 2000. Marvel alleged that this shakedown also was motivated by retaliation. In its July 24, 2001 order, the court denied Marvel's motion to add these allegations, as the events of July 2, 2000 occurred thirteen months after the events alleged in the original complaint and sixteen months after the filing of the personal injury action upon which the retaliation claim is based. Furthermore, the court determined that the July 2, 2000 cell shakedown was not sufficiently related to the events alleged in the original complaint.

On October 16, 2000, the plaintiff filed a motion to supplement his complaint. By this motion, Marvel sought to add defendants and allegations relating to a "cart-type" shakedown[2] that occurred on August 2, 2000. In his motion, the plaintiff also sought to add allegations regarding a transfer on August 3, 2000 to a more restrictive tier of the prison. In its order of July 24, 2001, the court denied Marvel's request to add the August 2, 2000 shakedown to his complaint, because the search, having been conducted by three individuals not named in the original complaint, appeared unrelated to the events alleged therein. In the same order, however, the court granted Marvel's request to supplement his complaint with allegations regarding his August 3, 2000 transfer.

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[2] As explained in the court's order of July 24, 2001, Marvel alleges that a "cart-type" shakedown is unusual and occurs when prison officials remove a prisoner's possessions from his cell by way of a cart, to be examined in a different area of the institution.

This case was suspended pending an appeal of the court's order of July 24, 2001. On April 23, 2002, the Court of Appeals for the Third Circuit affirmed the ruling. *See Marvel v. Snyder*, 33 Fed. Appx. 39. Shortly thereafter, on May 29, 2002, the plaintiff filed a Second Amended and Supplemental Complaint. Despite the court's order, this pleading included allegations related to the cell search of July 2, 2000.

On February 26, 2003, the plaintiff and the defendants each filed a motion for summary judgment. In his briefing, the plaintiff reiterated allegations concerning the cell shakedown of July 2, 2000. Marvel's briefing also included allegations regarding a confiscation of his legal papers which allegedly occurred during the search of May 31, 1999, a cavity search performed on the same date, and a transfer to a maximum security tier of the prison occurring in April of 2001. In a memorandum and order dated May 9, 2003, the court held that the plaintiff was precluded from introducing allegations regarding the alleged cavity search or April 2001 transfer.[3] The court granted Marvel leave, however, to pursue his claim relating to the alleged seizure of his legal documents, as this allegation is "clearly related to the plaintiff's primary retaliation claim revolving around the May 31, 1999 cell search." *Marvel v. Snyder*, 2003 WL 21051712, at *2 (D. Del., May 9, 2003).

By the plaintiff's present motion, he seeks reargument of the court's May 9, 2003 order. Specifically, Marvel objects to the court's ruling that he will not be permitted to introduce at trial evidence of cell searches occurring in July and August of 2000, or evidence regarding the plaintiff's transfer in April 2001 to a maximum security section of the prison.[4]

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[3] To that extent, the court also granted the defendants' motion *in limine* filed on May 7, 2003.

[4] The plaintiff does not seek reargument of the court's denial of the parties' cross motions for summary judgment. Pl.'s Motion for Reargument at 1 n.1. Nor does he appear to

II. STANDARD OF REVIEW

Although not expressly provided for in the Federal Rules of Civil Procedure, Local Rule 7.1.5 permits the filing of reargument motions. D. Del. L.R. 7.1.5. Motions for reargument should be granted only "sparingly." *Karr v. Castle*, 768 F. Supp. 1087, 1090 (D. Del. 1991). Nonetheless, the court, in its discretion, may grant such a motion if it appears that the court has patently misunderstood a party, has a made a decision outside the adversarial issues presented by the parties, or has made an error of apprehension. *Shering Corp. v. Amgen, Inc.*, 25 F. Supp. 2d 293, 295 (D. Del. 1998); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990) (citing *Above the Belt, Inc. v. Mel Bonhannan Roofing, Inc.*, 99 F.R.D. 101 (E.D. Va. 1983)); *see also Karr*, 768 F. Supp. at 1090 (citing same). Even if the court has committed one of these errors, there is no need to grant a motion for reconsideration if it would not alter the court's initial decision. *Pirelli Cable Corp. v. Ciena Corp.*, 988 F. Supp. 424, 455 (D. Del. 1998). Finally, motions for reconsideration "should not be used to rehash arguments already briefed." *TI Group Automotive Systems, (North America), Inc. v. VDO North America L.L.C.*, 2002 WL 87472 (D. Del. 2002) (citation omitted); *see also Quaker Alloy Casting v. Gulfco Industries, Inc.*, 123 F.R.D. 282, 288 (N.D. Ill. 1988) ("[T]his Court's opinions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure.").

III. DISCUSSION

Marvel objects to the court's ruling that he will not be permitted to introduce at trial evidence of certain cell searches or "shakedowns" or evidence regarding his April 2001 transfer to a maximum security section of the prison. The plaintiff suggests that reargument of the court's order is warranted

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object to the court's ruling regarding the alleged cavity search.

for three reasons: (1) the court misapprehended the plaintiff's request for injunctive relief; (2) the defendants were not unfairly prejudiced by the assertion of the evidence; and (3) the plaintiff was not afforded an opportunity to address the legal issues embraced by the defendant's motion *in limine* and the court's previous order. The court will briefly address each of these contentions in turn.

First, it should be noted that in the court's order of May 9, 2003, it stated that the plaintiff "seeks injunctive relief in the form of a declaratory judgment ordering him to be reinstated with the environmental crew as well as monetary damages," *Marvel v. Snyder*, 2003 WL 21051712, at *1, as requested in Marvel's original complaint. The plaintiff's Second Amended and Supplemental Complaint now seeks broader injunctive relief.[5] Regardless of the exact form of injunctive relief sought by Marvel, the court's reasoning stands. The court determined in its order of July 24, 2001 that the cell search of July 2, 2000 was temporally and factually removed from the allegations in the original complaint and that there was a risk of substantial prejudice in requiring the defendants to address such an unrelated charge. These grounds for denying Marvel leave to insert the incident in his subsequent pleadings or to introduce evidence of it at trial are not altered by the change in the language of the plaintiff's prayer for injunctive relief. Similar grounds exist for denying leave to pursue allegations regarding the cell search of August 2000 and the transfer of April 2001. Thus, the plaintiff's request for reargument on this basis is entirely unpersuasive.

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[5] "Plaintiff requests the Court enter judgment in his favor and against defendants as follows: Preliminarily and permanently restraining, enjoining, and prohibiting defendants, in their official and individual capacities, from undertaking, enforcing, maintaining or adopting any policies, procedures, practices or acts that are retaliatory in character against Plaintiff . . .and [e]ntering such other relief as this Court deems just and appropriate." Second Amended and Supplemental Complaint ¶ 71.

Also unavailing is the plaintiff's argument concerning prejudice. The court determined on July 24, 2001 that it would have been substantially prejudicial to the defendants to require them to address allegations of incidents that occurred more than one year after the events detailed in the original complaint. The court reiterated these concerns in its order of May 9, 2003. The prejudice remains clear today: this case was filed almost four years ago; the deadline for amending the pleadings expired some six months ago; the discovery period has been closed for over three months; and two rounds of summary judgment proceedings have been completed. Furthermore, the court determined that there existed grounds other than prejudice to the defendants for denying Marvel's requests to add the additional claims to his complaint. The plaintiff's motion for reargument on this basis is rejected.

Third, Marvel argues that he was not afforded an adequate opportunity to respond to the defendants' motion *in limine* as it relates to the plaintiff's claims that have been barred by the court. To borrow a phrase from the defendants, the court finds this contention "ludicrous." Defs.' Opposition to Pl.'s Motion (D.I. 159) at 4. The allegations regarding the cell searches of April and August 2000 have been fully briefed and decided by the court at least twice.[6] The claim regarding the April 2001 transfer was discussed in the plaintiff's briefing supporting his motion for summary judgment.[7] The court granted the defendants' motion *in limine* only as it related to these issues. *See*

[6] The court appreciates that the court's order of July 24, 2001 issued before counsel for the plaintiff was appointed on February 7, 2002. Nonetheless, many of the same issues were rehashed in the parties' summary judgment motions, filed after counsel's appointment to the case, and decided on May 9, 2003. Furthermore, the court is not required to revisit every issue previously determined by the court upon the appointment of counsel.

[7] The court also notes that this transfer occurred approximately two years after the events upon which the original complaint is based. Thus, the court would not alter its decision regarding this claim.

Marvel v. Snyder, 2003 WL 21051712, at *3 (granting in part and denying in part defendants' motion *in limine* as it concerned these three claims and reserving judgment as to other issues raised in the motion). Thus, the court is unmoved by the plaintiff's argument that he lacked sufficient opportunity to address these matters.

By repeatedly filing motions in which redundant legal arguments are rehashed, and by including in the Second Amended and Supplemental Complaint allegations that were expressly barred by the court, the plaintiff has flouted the letter and spirit of the court's orders. This conduct represents an abuse of the legal system and an inexcusable drain on the court's limited resources. Any further motion for reargument or reconsideration of these issues, and any attempt at trial to introduce evidence which the court has excluded from the case, will result in a finding of contempt on the part of the offending counsel, followed by an order of appropriate sanctions.

IV. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED THAT:

1. The plaintiff's Motion for Reargument (D.I. 156) is DENIED.

2. Paragraph 62 of the Second Amended and Supplemental Complaint, relating to an alleged search of the plaintiff's prison cell occurring on July 2, 2000, is STRICKEN.

3. Any disregard of the letter or spirit of this order shall result, without further notice, in a finding of contempt of court on the part of the offending counsel, and an order of appropriate sanctions.

Dated: July 8, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE