



LGIT'S COMMANDER'S LOG
June 2010

Regardless of how extreme the allegations, an inmate's lawsuit cannot survive absent supportive evidence

QUESTION: Can an inmate's lawsuit in which extreme allegations of abuse and mistreatment are made survive absent actual supporting evidence?

ANSWER: No. In the absence of supportive evidence (such as records, sworn statements, photographs, etc.), even those prisoner suits in which extreme allegations of mistreatment are made will routinely be dismissed by courts at the earliest opportunity.

**CASE: *Bacon v. Friend*, United States District Court for the District of Maryland
Decided April 5, 2010 (Unpublished)**

In this case, Gilbert Bacon, who was incarcerated at the Western Correctional Institution (WCI) in Cumberland, Maryland, filed a federal lawsuit against the warden, numerous officers, psychologists, and psychologist associates at WCI. Bacon asserted that he was an "open homosexual" who suffered from mental illnesses requiring medication. Among his diagnoses, Bacon claimed to suffer from dementia, anxiety disorders, schizophrenia, sleep disorders, and impulse-control disorders. Due to both his open homosexuality and his mental illness, Bacon claimed other inmates would frequently refuse to allow him to share a cell with them. He claimed that frequently inmates who were asked to share a cell with him became violent and hostile, threatening to kill him if they were not removed from his cell. Bacon claimed that from February 16 through 23, 2009, another inmate was required by a lieutenant (Lt. Friend) to move into Bacon's cell. The other inmate told Bacon that he couldn't live in a cell with a "punk" and ordered Bacon to get the officers to move him out of the cell. Bacon allegedly told Lt. Friend that his life was in danger and that he had been threatened by the other inmate. Bacon alleged that Lt. Friend ignored his request to move him and said that Bacon would have "to fuck or fight." Feeling as if he had no other avenue to obtain a new cell assignment, Bacon cut his arm with a razor blade. He alleged that he began bleeding profusely and only then was he removed from his cell and provided medical care. Bacon claimed, however, that he was refused psychological care by three different psychologists. He asserted that he should have been placed on suicide watch because he injured himself, but that one of the psychologists told him that the psychology department would not be handling his case and turned the matter over to Lt. Friend.

Bacon claimed that Lt. Friend ordered him to be placed in an isolation cell known as the "ice box." On one occasion, Bacon alleged that once he was in the cell, all of his clothes were taken and that he was left in the cell naked with no bed, mattress or blanket. He claimed he

observed Lt. Friend and several other officers outside of his cell putting rocks along the outside of the window so that it could not be closed. Bacon asserted that he was forced to sleep on the cold floor for four days, was not provided toilet paper, and was refused his daily psychotropic medication. Bacon alleged the psychologists told him he could not receive any medications while he was in the ice box.

Finally, Bacon claimed that the ice box is a cell used by the warden, chief of security, and Lt. Friend to hold mostly Black inmates who have been beaten by officers. He asserted they were left in the ice box to allow their wounds to heal. Bacon described Lt. Friend as having been given the power to run the lock-up unit as he pleased and that he believed he was above the law.

Defendants denied Bacon's numerous claims, including the claim that he was denied psychological treatment after injuring himself. Defendants provided ample evidence in support of their contentions, including medical records and sworn affidavits. Through their evidence, Defendants established that Bacon never complained about his cell mate, but did cut himself with a razor blade. His wounds were examined by Nurse Laura Brackett and no profuse bleeding was noted. Bacon was referred to psychiatry when medical staff were notified of the attempted suicide. He was placed on suicide watch in a contingency cell and evaluated by psychiatric staff. When questioned by a member of the psychiatric staff, Bacon denied any suicidal intentions and stated his purpose was to manipulate his housing assignment. Bacon also agreed to continue taking his medication. It was determined by psychiatric staff later in the day that Bacon was ready to return to his regular housing unit. He was described as alert, cooperative, and in no acute distress. A member of the psychiatric staff did note, however, that Bacon "felt uncomfortable being housed" with the inmate assigned to his cell. Lt. Friend denied that Bacon had ever complained to him about compatibility issues with his cell mate. He also denied mistreating Bacon at any time.

In its ruling, the court stated that as a prisoner, Bacon is entitled to appropriate psychiatric care for a serious psychiatric disorder. The court observed that there is no distinction between the right to medical care for physical ills and its psychological and psychiatric counterpart. A prisoner is entitled to such treatment if a physician or other health care provider, exercising ordinary skill and care at the time of the observation concludes with reasonable certainty: (1) that the prisoner's symptoms evidence a serious disease or injury; (2) that such disease or injury is curable or may be substantially alleviated; and (3) that the potential for harm to the prisoner by reason of delay or denial of care would be substantial. The right to treatment is based upon the essential test of medical necessity and not upon that care considered merely desirable.

Here, the evidence established that Bacon engaged in self-injurious behavior in order to force prison officials to change his housing assignment. Bacon failed to refute the evidence submitted by the Defendants. The evidence established his psychiatric referral and that he was placed on suicide watch. Accordingly, Bacon's lawsuit was dismissed.

NOTE: Even though the prisoner in this case failed to support his claims with evidence, it is important to keep in mind that courts equate physical illness and injuries with mental illness

and injury. Since there can be serious consequences flowing from both, including on the mental side suicide or attempted suicide, both correctional and medical staff must be alert for and prepared to respond to the warning signs of emotional illness.

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