

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

JOHN/JANE DOE NUMBERS 1 AND 2
and GARY R. McCAUGHTRY,

Defendants.

ORDER

01-C-209-C

In this action, plaintiff Lindell alleges that his First Amendment free speech rights were violated when, on or about July 25, 2000, defendants Doe intentionally deprived him of issue #45 of *Pagan Revival*, a magazine plaintiff describes as expressing “Euro-centric” religious, philosophical and political views. Initially, I denied plaintiff leave to proceed on this claim and several other claims. Plaintiff appealed. On January 3, 2003, the Court of Appeals for the Seventh Circuit affirmed the dismissal with the exception of plaintiff’s First Amendment claim, which it vacated and remanded for further consideration. In its decision, the court of appeals noted that it had been improper for this court to rely on documents from the prison grievance process attached to plaintiff’s complaint that showed that when

prison officials investigated the disappearance of plaintiff's magazine, they concluded that the issue had been lost after it was sent to the security office for review. The court of appeals held that at the initial screening stage of the lawsuit, this court should have ignored the finding of the inmate complaint examiner and accepted as true plaintiff's allegations that the magazine was not lost, but taken intentionally for the purpose of preventing plaintiff from reading its content. See Lindell v. Doe, 01-2527 (7th Cir. Jan. 3, 2002) (unpublished).

Presently, plaintiff is proceeding against defendant Gary McCaughtry for the sole purpose of learning the identities of the Doe defendants. Plaintiff has been told that if he fails to amend his complaint to name as defendants the person or persons who were personally involved in allegedly depriving him of his rights, he will be unable to serve them with his complaint and this omission will necessarily lead to the dismissal of his case.

On March 17, 2003, Magistrate Judge Stephen Crocker held a preliminary pretrial conference in the case. At the conference, the magistrate judge asked counsel for defendant McCaughtry to identify no later than April 14, 2003, all Doe defendants "fitting the description provided in plaintiff's complaint." Not foreseeing any difficulty in this step, the magistrate judge also gave plaintiff until April 24, 2003, in which to file an amended complaint in which he would replace all references to the Doe defendants with the names counsel gave him.

On April 14, Assistant Attorney General Monica Burkert-Brist responded to the

magistrate judge's request. In the response, counsel reasserted the position taken by the officer who investigated plaintiff's inmate complaint before the lawsuit was filed, that is, that the issue of *Pagan Revival* that was sent to plaintiff was lost sometime after it left the mailroom for the security office. In addition, counsel asserts that ordinarily, security procedures provide that the security officer reviewing mail use a stamp assigned to the officer for marking mail after it is reviewed. In this case, because the original piece of mail is lost, so is the identifying mark of the reviewing officer. Nevertheless, in an effort to comply with the magistrate judge's order, counsel supplied the names of twelve correctional officers who were scheduled to work in the prison's mail room on July 25, 26 and 27, 2000, and nine security supervisors who were scheduled for duty those same days.

Plaintiff is unhappy with counsel's response. He has filed a letter dated April 15, 2003, in which he asks for an order imposing Rule 11 sanctions on counsel for "deceiving the court." In addition, he wants an order compelling counsel to disclose the names of Does #1 and 2. In his letter, plaintiff suggests that counsel for defendants had a duty to conduct a "reasonable inquiry" into the disappearance of his magazine and if she had done so, she would have been able to learn the names of the persons who allegedly violated plaintiff's constitutional rights. However, I conclude that plaintiff's obsession with learning precisely who lost or intentionally took his magazine is needlessly delaying the progress of this lawsuit.

Plaintiff knew before he filed his lawsuit that the inmate complaint examiner

investigating his objection to the non-delivery of issue #45 of *Pagan Revival* was unable to locate the publication. Also, he knew that the examiner recommended that he be reimbursed for the issue and cautioned plaintiff that because the same issue had been reviewed for another inmate and was determined to be contraband on the basis of its content, he would not be allowed to receive it if he reordered it. Because plaintiff was told that he would not be allowed to receive issue #45 under any circumstances, it is irrelevant who lost or took the publication. Plaintiff's beef is that he has been unable to receive it and that the reason he is unable to receive it is because of its content. Defendant McCaughtry accepted the recommendations of the inmate complaint examiner and the corrections complaint examiner to dismiss plaintiff's complaint and to advise plaintiff that he would not be allowed to have the publication if he were to reorder it. Because defendant McCaughtry is ultimately responsible for implementation of the prison regulations governing mail censorship and because he approved the decision to censor the publication plaintiff ordered, McCaughtry has the necessary personal involvement in the complained of act to allow him to be sued under 42 U.S.C. § 1983.

Accordingly, IT IS ORDERED that plaintiff's motion for Rule 11 sanctions and an order compelling defendant McCaughtry to reveal the identities of defendants Doe #1 and Doe 2 is DENIED.

Further, IT IS ORDERED that the Doe defendants are DISMISSED from this case.

Plaintiff is allowed to proceed on his First Amendment claim against defendant McCaughtry for all purposes.

Entered this 2nd day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge