

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

JERRY CHARLES,

Plaintiff,

v.

DICK VERHAGEN and JON LITSCHER,

Defendants.

ORDER

01-C-253-C

On November 1, 2002, the clerk of court taxed costs against defendant in the amount of \$150, representing plaintiff's filing fee in this case. The clerk declined to award plaintiff costs plaintiff claimed above \$150, because plaintiff failed to itemize and document those costs. Shortly thereafter, plaintiff moved for reconsideration of the November 1 order, conceding that he had no records of the costs he incurred other than a trust fund account statement showing generic entries of debits for legal work without reference to any specific case. In an order entered on November 18, 2002, I concluded that plaintiff's trust fund account statement was insufficient to warrant reconsideration of the cost award, because it was impossible to determine whether the entries related to this case or to the two other cases plaintiff was litigating at the time.

Now, nearly eight months later, plaintiff has submitted a letter dated July 5, 2003, in which he states, "I finally found my receipts for case no. 01-C-253-C. After being released from the temporary lock-up, I discover[ed] them in a box that was in the property room." He attaches to his letter a packet of receipts and a three-page itemization of the costs. I construe plaintiff's submission as a second motion for review of the clerk's November 1, 2002 order awarding costs. The motion will be denied.

Fed. R. Civ. P. 54(d)(1) allows any party to seek review of the clerk's action "on motion served within five days thereafter." Under Fed. R. Civ. P. 6(b)(2), a district court may entertain a challenge to costs out of time "where the failure to act was the result of excusable neglect." Plaintiff does not offer any explanation for the long delay in locating his receipts other than to say he "finally found them." He does not suggest that his status in temporary lock-up has been constant since November of 2002 and if it has been constant, why he could not have requested access to documents in the property room long before now.

Because plaintiff has failed to show excusable neglect for his failure to challenge the clerk's taxation of costs within the time allowed under Rule 54(d)(1), his second motion for review of the clerk's November 1, 2002 order will be denied.

ORDER

IT IS ORDERED that plaintiff's second motion for review of the clerk's November 1,

2002 order is DENIED as untimely.

Entered this 16th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge