

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

QUINTIN D. L'MINGGIO,

Plaintiff,

OPINION AND ORDER

v.

01-C-0559-C

PAMELA BARTELS, SHIRLEY OLSON,
DR. BOSTON, PATTY BOEBEL, JOLENE
MILLIN and SUZANE WATTERS,

Defendants.

On May 7, 2003, I granted defendants' motion for summary judgment in this case. Judgment of dismissal was entered on May 9, 2003. On May 27, 2003, the court received a document from plaintiff titled "Motion for Reconsideration as to the Decision Rendered by the Hon. Barbara B. Crabb Granting the Defendants' Motion for Summary Judgment." This document is dated May 16, 2003. I construe the motion as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

Motions filed pursuant to Fed. R. Civ. P. 59 must be filed within ten business days of the date of entry of the judgment. The prison "mailbox rule" established in Houston v. Lack, 487 U.S. 266 (1988), applies to Rule 59 motions. Edwards v. United States, 266 F.3d

756 (7th Cir. 2001). This means that plaintiff's motion will be considered timely filed if it was delivered to prison authorities for mailing with the correct postage within the ten day period allowed. Id. See also Fed. R. App. P. 4(c)(1).

Unfortunately, I cannot tell from plaintiff's filing when he might have turned it over to prison officials for mailing. Plaintiff dated his motion on May 16, 2003, but the motion did not arrive at the court until May 27, 2003, eleven days later. This suggests that plaintiff may not have turned it over to prison officials on the date he signed it. The envelope bearing plaintiff's motion was discarded in the clerk's office before the motion was forwarded to chambers. Therefore, I cannot verify the date on which the letter was posted, which might have shown that the motion was on its way to the court through the United States mail prior to May 23. If plaintiff did not deliver his motion in a stamped envelope to prison authorities for mailing on or before May 23, his motion will have to be denied as untimely.

Accordingly, IT IS ORDERED that plaintiff may have until June 18, 2003, in which to submit a declaration in compliance with 28 U.S.C. § 1746 (or a notarized affidavit) setting forth the date he deposited his Rule 59 motion in the institution's internal mail system with the correct postage. If, by June 18, 2003, plaintiff fails to aver that he delivered

his motion to prison authorities within the time allowed, I will deny his motion as untimely filed.

Entered this 4th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge