

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

A’KINBO J. S. HASHIM, a/k/a JOHN D. TIGGS,
VENCENT D. WHITAKER, JONATHAN P. COLE,
ANDREW B. COLLETTE, BRYSE L. GARRETT,
ALPHONCY DANGERFIELD, ANOTHY BODDIE,
NORMAN C. GREEN, JR., KENTA M. FINKLEY,
TERRY COMMODORE, EUGENE L. CHERRY,
SAMMY J. GATES, GLENN OWENS,
BARRELL FREEMAN, ERIC M. WASHINGTON,
TINGIA WHEELER, MICHAEL THOMAS,
MICHAEL A. SCIORTINO, MICHAEL OBUCHOWSKI, ORDER
MICHAEL ADAMS, DANIEL L. SMITH, 01-C-705-C
RONALD C. JACKSON, MICHAEL S. JOHNSON,
RUFUS LAJUAN LYNCH, TONY EPPENGER,
AMOS T. CRAIG, AL AMIN AKLAR-BEY,
AMOS BRANIGAN, BARON L. WALKER, SR.,
WALTER BROWN, SR., JOEDDIE SMITH,
JAMES P. BURBA, DENNIS W. GONZALEZ,
WILLIAM MADINA, KYLE BONER, RONALD LOZANO,
TIMOTHY REED, DAVID HUDSON, ANDRE TURNER,
ANTHONY SANDIFER, JOHN E. BACHER,
GUY DUNWALD, XAVIER J. RUIZ, STACY T. HAYNES,
MARCUS Y. PORTER, GARFIELD COOLEY, DENNIS E. JONES’EL,
RODOSOVALDO POZO, DU-YUL THAMES, GLENN TERELL TURNER,
DONALD CABBELL-LEE, RAYNELL MORGAN, TONY ALLEN DAVIS,
RASHID TALIB, CHIP BRANCH-BEY, ROBERT COLLINS-BEY,
CHRISTOPHER BERRY, FRANK ANASTASIA, JOSE ROSA,
MOSES COLLINS, MONTELL HORTON, MICHAEL BLACKBURN,
TODD JONES, MAURICE GREER, MAURICE DAVIS,
ABEL SILVA, FOUNTAINE GORDON, MATHEW SCHUMACHER,
JAMES D. TOWNS, AGUSTIN VELEZ, ANTONIO MENDEZ,
COURTNEY FIEDLER, DERRICK A. SANDERS,

EZRA CHARLES MARTIN, JR., LAMONT BROWN,
CORNELIUS MADDOX and GERALD A. TUCKER,

Plaintiffs,

v.

GERALD A. BERGE,

Defendant.

In an order entered on February 20, 2002, I struck the complaint in this case because it was filed without the original signatures of all the plaintiffs and plaintiffs had failed to cure the defect after receiving notice of it. In addition, I directed plaintiff A'kinbo J. S. Hashim, a/k/a John D. Tiggs, to show cause in writing no later than March 15, 2002, why this lawsuit should not be dismissed under Fed. R. Civ. P. 11(b) and why he should not be barred from litigating any new lawsuit in which he names anyone other than himself as a plaintiff because of his misrepresentations to the court in this lawsuit. I stated that if, by March 15, 2002, plaintiff Tiggs failed to show cause why the sanctions set out above should not be imposed, this case would be dismissed without prejudice to each plaintiff's filing his own individual lawsuit raising the claims he believes are pertinent to him. I stated also that I would impose the additional sanction on plaintiff Tiggs that he may not litigate any more lawsuits in this court in which he names anyone other than himself as a plaintiff. Plaintiff Tiggs has

responded to the February 20 order. From his response, I conclude that he has not shown cause why this case should not be dismissed under Fed. R. Civ. P. 11(b) or why he should not be barred from filing any new lawsuits in which he names anyone other than himself as a plaintiff.

Background

This case was filed in the Circuit Court for Dane County, Wisconsin. Subsequently, defendant removed the case to this court on the ground that the complaint contains claims of constitutional wrongdoing over which this court has original jurisdiction. Plaintiff A'kinbo Hashim, a/k/a John D. Tiggs, drafted the complaint and the majority of the motions filed to date. The complaint is 22 pages long, has 397 pages of exhibits and includes at least 20 claims. In the caption, Tiggs lists 77 persons as plaintiffs, including himself. He attached to the back of the complaint two pages of signatures; one signature page is photocopied, the other is carbon-copied.

John Tiggs has been litigating in this court for approximately five years. He struck out under 28 U.S.C. § 1915(g) on July 27, 2001, in Tiggs v. Litscher, 01-C-266-C, after he filed his third meritless lawsuit. The trust fund account statements Tiggs submitted with his various lawsuits reveal that he has no money in his prison account. Nevertheless, Tiggs has continued to file lawsuits since recording his third strike. In Tiggs v. Berge, 01-C-314-C,

Tiggs listed more than 80 co-plaintiffs in the lawsuit, several of whom paid initial partial payments sufficient to cover the full filing fee. During the short life of that lawsuit, a significant number of Tiggs's co-plaintiffs opted out of the lawsuit. After the complaint was screened under 28 U.S.C. § 1915A and the claims were found to be meritless, all of the plaintiffs who had not opted out of the lawsuit received a strike under § 1915(g). Subsequently, two of Tiggs's co-plaintiffs sought removal of the strikes against them on the ground that they had been unaware of one of the prominent claims in the complaint. By the time case no. 01-C-314-C was closed, I had serious questions whether plaintiff Tiggs was pursuing lawsuits on behalf of persons who were not participating in any meaningful way in the litigation or who had been named as litigants without their knowledge or permission.

This lawsuit has put those concerns squarely on the table. On the basis of the physical size of the complaint, Tiggs's destitution, the large number of pro se plaintiffs and the absence of original signatures on pages that showed a clear relationship to the complaint, I was unwilling to allow the lawsuit to advance further until I was satisfied that every plaintiff who was named in the lawsuit and whose signature appeared on the pages attached to the complaint had seen and read the complaint and had in his possession a copy of the complaint and all of the motions Tiggs had filed after filing the complaint. I found this assurance necessary because the law forbids Tiggs, who is not a lawyer, to represent other pro se litigants in a lawsuit and Rule 11 requires each plaintiff to certify by his signature that to

the best of the signer's knowledge, information and belief formed after reasonable inquiry, the allegations of the complaint are well grounded in fact and the lawsuit is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and that the filing of the complaint is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needlessly increase the cost of litigation.

In an order entered on January 28, 2002, I advised the plaintiffs in this case that because plaintiff Tiggs was proceeding pro se, he could not represent them in this lawsuit and that for this reason, it was imperative that each plaintiff have a copy of the complaint and other filings in this case in his possession so as to be in a position to make his own decisions about the manner in which to respond to dispositive motions or prepare for further prosecution of his claims. To satisfy myself that every plaintiff had his own complaint and was participating independently in the litigation, I directed each of them to submit the following:

1) his own copy of page 19 of the complaint on which he would sign his name and state affirmatively that he had read the entire complaint;

2) a paper specifying the paragraph numbers of the complaint that set forth the claims he had standing to assert; and

3) a separate paper listing the date and title of each motion or discovery request that he had received from a co-plaintiff or that he had signed and submitted to the court.

I cautioned plaintiffs that any one of them who failed to comply with the requirements of the January 28 order by February 14, 2002, would be dismissed from this lawsuit without prejudice to his filing his own lawsuit separate from this one.

In an order entered on February 20, 2002, I assessed the responses to the January 28 order. Specifically, I found the following:

Only 29 of the 77 plaintiffs named in the lawsuit, including plaintiff Tiggs, have indicated in response to the January 28 order that they wish to be a part of this lawsuit. One plaintiff did not receive the January 28 order because he has been released from prison and has not written to advise the court of his new address. Another three plaintiffs wrote the court before the January 28 order was mailed to request that they be dismissed from the action. Five more plaintiffs asked to be dropped from the case after they received the January 28 order. One of the five stated that he had no idea why or how his name had been included in the case. Another one of the five asked to be dismissed because the prison rule preventing inmates from passing photocopied materials to each other prevented him from participating in the lawsuit.

Thirty-nine persons whose names and signatures appear on the complaint as plaintiffs did not respond to the order, which I have accepted as confirmation that they have no interest in participating in this lawsuit.

Of the 28 prisoners other than Tiggs who expressed an interest in participating in the lawsuit, 21 failed to provide the court with a copy of page 19 of the complaint bearing an original signature and a statement indicating they had read the complaint. Some of the 28 persons, but not all of them, claim to have a copy of the complaint. One person making such a claim wrote in a separate communication, "this lawsuit is huge and we are not allowed to pass photocopies so it will be impossible for us to meet and comply with [your] order"

* * *

Several of the plaintiffs who responded to the order failed to list the paragraph numbers of the complaint that describe their claims, which suggests they do not have a copy of the complaint in their possession. Others stated baldly that “all the claims” pertained to them, which is unlikely given the fact that there is at least one claim in the complaint that has been alleged to affect only one unidentified plaintiff.

Relying on these findings, I concluded that plaintiffs’ failure to cure the signature defect in the complaint after the omission was brought to their attention required that the complaint be stricken under Fed. R. Civ. P. 11(a).

Also in the order of February 20, 2002, I observed:

As noted above, the lack of original signatures is not the only problem with the complaint. Despite the admonition in the January 28 order that plaintiff Tiggs could not act on behalf of any other plaintiff in the lawsuit, eight plaintiffs responding to the court’s order stated in their submissions that they were granting “power of attorney” or legal authority to plaintiff Tiggs to file papers on their behalf.

* * *

None of the plaintiffs accurately lists all of the documents that plaintiff Tiggs has filed in the case. Several list fewer than half of the documents Tiggs filed bearing either an indication that the document had been “cc’d” to all plaintiffs or a declaration “under penalty of perjury” that he had sent the document to all plaintiffs.

. . . The complaint with its exhibits totals 419 pages. At 10 cents a page for photocopies (assuming that is what the prison charges), it would cost Tiggs \$41.90 to copy the complaint for each co-plaintiff. With 76 co-plaintiffs, the cost of photocopying the complaint alone totals \$3184.40, a sum far beyond Tiggs’s means. Furthermore, there are documents in the court’s file totaling 70 pages on which Tiggs has represented that he sent copies to his co-plaintiffs. Again, assuming the cost of photocopies is \$.10 a

page, Tiggs would have had to spend another \$7.00 for each co-plaintiff, for a total of \$532.00 in copying costs for these documents. Add to this the cost of duplicating 76 times documents not in the court's file, which include plaintiffs' "First through Fourth sets of interrogatories," an alleged 100 pages of documentary exhibits in support of plaintiffs' "Ex Parte Motion for Temporary Relief," and plaintiffs' "First through Sixth Request for Admissions," with accompanying "supportive documents," and the total sum for photocopies rises again into the hundreds of dollars. The cost of mailing Tiggs's 419 page complaint and subsequent filings to the five co-plaintiffs listed in the caption of the complaint whom Tiggs identifies as former inmates at Supermax adds a further financial burden beyond Tiggs's apparent means.

From all of these findings and observations, I concluded in the February 20, 2002 order that plaintiff Tiggs was not being candid with the court when he represented that he had provided a full copy of the complaint to each of his co-plaintiffs. In addition, I found from the failure of the majority of plaintiffs responding to the January 28 order to provide this court with a copy of page 19 of the complaint, that they did not have page 19 or any other page of the complaint in their possession. Moreover, I stated my conviction that all of the plaintiffs named in this lawsuit were not aware at the time of filing that they had been named as a plaintiff in this suit and that all of the named plaintiffs had not seen, read and signed the complaint. I formed this belief from the letter of one co-plaintiff stating explicitly that he had no idea how his name had been included in the lawsuit and from the fact that more than half of the named plaintiffs indicated either in writing or by their silence that they had no interest in participating in this lawsuit.

From my findings of plaintiff Tiggs's failure to obtain the original signatures of all the

plaintiffs on the complaint he prepared and filed, his apparent failure to obtain the permission of all of the co-plaintiffs to be a part of his lawsuit and his lack of candor in representing to the court that he had served the other plaintiffs with copies of his filings in this case, I determined that sanctions should be imposed on plaintiff Tiggs pursuant to Fed. R. Civ. P. 11(b) unless, on or before March 15, 2002, he could show cause in writing why this lawsuit should not be dismissed and why his apparent misrepresentations to the court should not bar him from bringing any more lawsuits in which he names anyone other than himself as a plaintiff. This order addresses plaintiff Tiggs's response to the February 20 order.

Sanctions

As noted above, the complaint already has been struck pursuant to Fed. R. Civ. P. 11(a) because plaintiffs failed to cure the signature defect after they had been requested to do so. In plaintiff Tiggs's response to the order to show cause why additional sanctions should not be imposed for his misrepresentations to the court, he argues that it was improper for this court to strike the complaint. In plaintiff Tiggs's view, nothing in the rules of pleading requires a signature on a complaint to be an original signature rather than a reproduction of a signature. In addition, Tiggs requests leave to file an amended complaint naming only 25 plaintiffs whose signatures would be witnessed by a notary public.

This is not the time for plaintiff Tiggs to ask for reconsideration of the decision to strike the original complaint or to move to amend the complaint. His sole assignment was to show cause why his apparent misrepresentations to the court in this case should not result in sanctions limiting his ability to file future lawsuits involving more than himself as a plaintiff. The misrepresentations at issue consist of the following:

1) the representation implied by the signatures of 77 individual plaintiffs, whether original or photocopied, that each plaintiff was in compliance with Rule 11(b) when he signed the complaint; and

2) the explicit representations made by plaintiff Tiggs that he had served each of his co-plaintiffs copies of filings subsequent to the filing of the complaint.

Under Rule 11(b), the signature of a party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper being filed; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needlessly increase the cost of litigation.

Plaintiff Tiggs is well aware of the requirement that each plaintiff was to have been provided a copy of the pleading in this case. In a document titled "Plaintiffs' Notice of

Motion and Motion to Compel the Defendant to Comply with Sec. 801.14(1), Wis. Stats. And Serve All Seventy-Seven Plaintiffs with All Documents filed in this case by Defendant,” plaintiff Tiggs gives a lesson in civil procedure to an Assistant Attorney General for the state of Wisconsin who allegedly failed to serve all 77 plaintiffs in the case with a filing, stating

The statute pursuant to the Service and filing of pleadings and other papers and the likes is clear, succinct, and unambiguous and provide in pertinent part; sec. 801.14, Stats:

(1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion, other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties.

Nowhere in his response to the order of February 20 does plaintiff Tiggs make a showing that he provided a copy of the complaint in this case to each of his co-plaintiffs. Indeed, he admits the opposite. Tiggs explains that because prison policy prohibited him from circulating legal documents to other inmates, he asked approximately 11 fellow inmates to collect signatures on signature sheets. He states that he “briefed” the 11 inmates on the nature of the claims he intended to raise in the complaint in this case. He states further that this collection of signatures took place six months before he completed the final draft of the complaint. I conclude that when plaintiff Tiggs filed a complaint containing signatures from persons he knew had not seen or read the complaint and who were thus unable to certify the

validity of the allegations in the complaint, he misrepresented the authenticity of the complaint to the court.

With respect to the numerous other documents Tiggs has filed in this case, he has failed to provide a plausible explanation why none of the other plaintiffs could accurately list all of the filings with which he had allegedly served them. Instead, he filed the affidavits of two persons whose identities he requests remain confidential who aver that “on occasion” they have assisted Tiggs “with the production and distribution of legal papers.” Tiggs also states that he has received the assistance of others “who wish[] to remain anonymous.” This weak evidence of Tiggs’s ability to garner financial support for his legal endeavors from a few other persons falls far short of satisfying the required showing that he was not deceiving the court when he claimed under oath or otherwise indicated in writing that he was serving the other plaintiffs with his submissions.

In an apparent attempt to explain the discrepancy in the number of co-plaintiffs who Tiggs wishes the court to believe are willing participants in this lawsuit and the number who actually responded to the court’s January 28 order and provided information intended to clear Tiggs of suspected improprieties in the management and prosecution of this lawsuit, Tiggs makes an astonishing revelation. He explains that despite this court’s clear statement in the January 28 order that he was not permitted to represent the other pro se litigants in this case, he nevertheless directed his co-plaintiffs to “ignore this court’s January 28, 2002,

order. . .” to sign and submit page 19 of the complaint and list the claims pertaining to them and “instructed a number of plaintiffs not to respond because [he] believed the case would be remanded to the state court” and because he “assumed the language in the . . . order was . . . too complicated for [his] co-plaintiffs to succinctly follow without err [sic].”

Unfortunately for plaintiff Tiggs, this admission reveals his utter disregard and lack of appreciation for the obligations he has as the drafter of a lawsuit and motions involving other prisoner pro se litigants. Tiggs is not a licensed lawyer. Although he may fancy himself to be more advanced than his fellow inmates in the art of drafting pleadings and presenting legal claims, he has himself struck out under 28 U.S.C. § 1915(g) for filing legally meritless claims and he has caused others to have strikes recorded against them because he has included them as co-plaintiffs in his lawsuits. He should be well aware of the fact that every prisoner he includes in a multi-plaintiff lawsuit becomes bound by a judgment in the defendants’ favor in the event the claims he raises are unsuccessful and the fact that he exposes every plaintiff who joins his lawsuits to the risk of incurring a strike under § 1915(g) when and if the claims are found to be legally meritless. He should have known that these serious consequences of prosecuting a lawsuit pro se made it imperative that every plaintiff in the lawsuit be involved intimately in the planning and prosecution of the lawsuit. He should have known that the rules limiting inmate to inmate communications at the prison and his limited resources would make it impossible for him to fulfill this obligation.

In his response to the February 20, order, plaintiff Tiggs boasts an unabashed and proud conviction that he is entitled to control the filings of others who join him in a complaint, even to the extent of directing them to ignore orders of the court requesting their direct participation. His lack of appreciation for the responsibilities he has as a lead plaintiff in a lawsuit and his willingness to deceive the court in representing either explicitly or implicitly that the co-plaintiffs he names are participating meaningfully in the lawsuit, constitute adequate grounds for dismissing this lawsuit without prejudice to each plaintiff's filing a separate lawsuit raising his own claims and for barring plaintiff Tiggs from litigating in this court any new lawsuit in which he names anyone other than himself as a plaintiff.

With respect to the requirement that each plaintiff file his own separate lawsuit if he wishes to pursue one of more of the claims raised in this lawsuit, I note again as I did in the order of February 20, 2002, that because plaintiffs are seeking money damages for alleged unconstitutional harms inflicted upon them, their lawsuit is not appropriately brought as a group complaint. In order to succeed on a claim for damages, each plaintiff will have to submit independent evidence to prove his own injuries.

Because I am dismissing this case and barring plaintiff Tiggs from filing any lawsuit in which he names anyone else as a plaintiff and because I do not believe a group complaint is appropriate in actions seeking money damages, I will not permit plaintiffs to file an amended complaint in this case in which they limit the number of plaintiffs to 25 whose

signatures have been witnessed by a notary public.

ORDER

After considering the response of plaintiff A'Kinbo Hashim a/k/a John D. Tiggs, to the order of this court dated February 20, 2002, I find that he has failed to show cause why sanctions should not be imposed upon him under Fed. R. Civ. P. 11(b). Accordingly, IT IS ORDERED that

1) this lawsuit is DISMISSED without prejudice to each plaintiff's filing his own individual lawsuit raising the claims he believes are pertinent to him; and

2) plaintiff A'Kinbo Hashim, a/k/a John D. Tiggs, is barred from litigating in this court any future lawsuit in which he names anyone other than himself as a plaintiff.

Further, IT IS ORDERED that the request for leave to file an amended complaint in this case is DENIED.

Entered this 15th day of April, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge