

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

LEON IRBY,

Plaintiff,

v.

ORDER

03-C-346-C

JON E. LITSCHER, Secretary, DOC;
CINDY O'DONNELL, Deputy Secretary, DOC;
JOHN RAY, Corrections Complaint Examiner (CCE), DOC;
SHARON K. ZUNKER, Director, Bureau of Health Services, DOC;
GERALD BERGE, Warden, SMCI;
TOM GONZINSKI, ICE, SMCI;
KELLY COON, ICE, Program Assistant, SMCI;
PAMELA BARTELS, Health Services Unit (HSU) Manager, SMCI,

Defendants.

Judgment was entered in this case on July 23, 2004, granting defendants' motions for summary judgment and closing the case. Now plaintiff has filed a letter and an affidavit dated August 2, 2004, which I construe together as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

In his motion, plaintiff contends that this court erred in ruling on defendants' motions for summary judgment without having the benefit of his response to the motions.

He says that on May 19, 2004, he addressed a letter to Magistrate Judge Stephen Crocker asking for a 10-day extension of time in which to oppose defendants' motions and that he never received a response. Plaintiff states that he needed the extension because at the time, he had exceeded the \$200 legal loan limit that the state of Wisconsin grants to state prisoners.

The court's record reflects that all of the defendants except defendant Bartels moved for summary judgment on April 5, 2004. Defendant Bartels moved for summary judgment on April 15, 2004. A separate briefing schedule was established on each motion at the time it was filed. Subsequently, plaintiff requested consolidation of the briefing schedules and an extension of time in which to oppose the motions. That motion was granted in an order entered by the magistrate judge on April 27, 2004. On May 24, 2004, plaintiff filed a second motion (dated May 19, 2004) for an extension of time to oppose defendants' motions. In this motion, plaintiff complained that he had depleted his \$200 legal loan limit for the year and could not oppose the motions until he provided the prison's business director with a disbursement request and a "court order requiring [him] to forward specific materials to the court." I responded on the same day, granting the motion and noting that the magistrate judge's April 27, 2004 order setting the deadline within which plaintiff was to oppose defendants' motions should suffice as the court order required by the prison's business director. I told plaintiff as well that if he was unable to obtain a legal loan

extension and submit his opposition papers by June 2, 2004, I would take defendants' motions under advisement and decide them without having the benefit of his response. I told plaintiff that I would not interfere in any decision of the business director to deny him a legal loan extension in light of Lindell v. McCallum, 352 F.3d 1107, 1111 (7th Cir. 2003) (district courts in Wisconsin under no obligation to order state of Wisconsin to lend prisoners more money or paper than they are authorized to receive under Wis. Adm. Code § DOC 309.51). Plaintiff did not oppose the motions by June 2, 2004.

For reasons not readily apparent, it appears from the court's record that the order of May 24, 2004, was mailed to attorneys John Glinski and Douglas Knott, both of whom represented the defendants, but not to plaintiff. Therefore, I am enclosing a copy of the order to plaintiff with a copy of this one. Nevertheless, I do not believe that plaintiff's lack of notice that the court had granted his May 19 motion constitutes good cause for his failure to oppose defendants' motions before they were ultimately decided almost two months later on July 23, 2004. If plaintiff was prepared to oppose defendants' motions within the 10-day extended period he requested, he should have submitted his opposition papers by June 2, 2004, with or without the court's order. Even if he did not obtain a legal loan extension until after June 2, he could have submitted his papers promptly upon receipt of the loan at any time before the motions for summary judgment were decided and requested the court's consideration of them. Plaintiff did neither of these things. He has remained silent until

now, and even now, he has not opposed defendants' motions.

Because plaintiff has shown no basis for a finding that this court erred in deciding defendants' motions for summary judgment without granting him repeated extensions of time in which to oppose the motions, his motion to alter or amend the judgment will be denied.

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment entered in this case on July 23, 2004 is DENIED.

A timely filed motion extends the time for filing a notice of appeal , if an appeal is to be taken, to thirty days from the date of the entry of the order disposing of the Rule 59 motion. See Fed. R. App. P. 4(a)(4)(A)(iv). Therefore, plaintiff has thirty days from the date of entry of this order in which to file a notice of appeal.

Entered this 9th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge