

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

ORLANDO MATTHEWS,

Plaintiff,

ORDER

v.

04-C-482-C

MARTEN TRANSPORT, LTD.; RANDY
MARTEN and WILLIAM (BILL) KENNEDY,
in their official and individual capacities,

Defendants.

In this civil action, plaintiff alleges that defendants subjected him to race discrimination in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §§ 1981 and 1985, by conspiring to maintain unwritten policies and practices for performing inadequate vehicle maintenance checks on company vehicles driven by defendants' black employees. In addition, plaintiff alleges that defendants conspired to "shame, ridicule, embarrass and unjustly terminate him" from his job because of his race, using as a pretext to discharge him his alleged failure to exercise due diligence in connection with a vehicle accident. Plaintiff alleges that defendants terminate African-American employees at a "much

higher rate” than Caucasian employees and engage in a pattern and practice of evaluating, compensating and promoting African-American employees less generously than Caucasian employees. One of the alleged conspirators, William Kennedy, died before he could be served with plaintiff’s complaint.

In an order dated August 9, 2004, I informed plaintiff that under Fed. R. Civ. P. 25(a)(1), he had 90 days from August 4 (the date the suggestion of Kennedy’s death appeared in the court’s record) within which to file a motion for substitution of Kennedy’s estate in place of Kennedy. I directed plaintiff to advise the court in writing no later than September 6, 2004, whether he intended to dismiss his claims against defendant Kennedy or move to substitute defendant Kennedy’s estate as a defendant. I noted also that if plaintiff advised the court that he would be moving for substitution of the parties, he would have to be prepared either to provide the name and address of the person to be served with his complaint on behalf of defendant Kennedy’s estate or to advise the court of his progress in learning the name of such individual.

On September 7, 2004, plaintiff filed a letter in which he stated that he was in the process of trying to find Kennedy’s next of kin. He advised the court that he was forwarding a copy of his letter to Susan Deetz, the Human Resource Manager at Marten Transport, in the hopes she would provide plaintiff or the court with that information. On September 14, 2004, plaintiff filed a document titled “Motion for Discovery” (Dkt. #10), in which he

asked the court to order defendants Marten Transport and Randy Marten to disclose the address of defendant William Kennedy's estate administrator.

On October 5, 2004, Magistrate Judge Stephen Crocker denied plaintiff's motion as premature. The magistrate judge advised plaintiff that discovery in civil lawsuits involving pro se litigants does not begin until after the preliminary pretrial conference, which in this case was scheduled for November 3. He told plaintiff that at the conference, he would discuss discovery generally and direct the parties to file motions "pursuant to the rules laid down by the court."

In an order dated November 22, 2004, I noted that when the magistrate judge denied plaintiff's discovery motion as premature, it appeared he had been unaware that the 90-day deadline for substituting Kennedy's estate would occur on November 1, 2004, before the preliminary pretrial conference could be held. More important, I noted that the information plaintiff wanted from the defendants in discovery was available to him in public records. I told plaintiff that he could obtain the information he wanted directly from the Register in Probate for Buffalo County, Wisconsin, and I provided him with the telephone number for that office. I then ordered that plaintiff could have until December 17, 2004, in which to substitute defendant William Kennedy's estate for William Kennedy and provide an address at which the estate administrator could be served with plaintiff's complaint. I told plaintiff that if, by December 17, 2004, he failed to provide the information necessary to serve the

estate with his lawsuit, then defendant Kennedy would be dismissed from the action.

On December 20, 2004, plaintiff filed a motion for substitution of defendant William Kennedy and on December 23, 2004, he amended that motion. The amended motion is presently before the court.

In his motion, plaintiff asks to substitute the trustee of William Kennedy's estate for William Kennedy. However, plaintiff states that he still does not know who that trustee is. He asks the court's forbearance on this issue, explaining that he has attempted to obtain the name and address of the trustee through interrogatories served on the defendants and through a letter addressed to the Human Resource Manager for Marten Transport. Inexplicably, he does not say that he made any effort to obtain the information directly from the Register in Probate of Buffalo County, which would have been the easiest, quickest and most accurate way to learn who may legally accept service of process on behalf of the estate.

Because plaintiff missed the 90-day deadline for substituting proposed defendant Kennedy's estate for William Kennedy, and because he offers no viable explanation for his failure to timely identify the administrator of the estate so that he or she can be served with his complaint, I conclude that William Kennedy must be dismissed from this action.

ORDER

IT IS ORDERED that defendant William Kennedy is DISMISSED for plaintiff's failure to timely substitute Kennedy's estate and identify the administrator of the estate so that he or she could be served with plaintiff's complaint.

Entered this 28th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge