

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

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JAMES R. WHITWELL,

Plaintiff,

v.

BRAD HOYT (Deputy Sheriff);  
DOUGLAS COUNTY SHERIFF;  
COUNTY OF DOUGLAS,

Defendants.  
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ORDER

04-C-0981-C

In an order dated January 4, 2005, I dismissed the Douglas County Jail as a defendant in this lawsuit and substituted the Douglas County Sheriff in place of the sheriff's department. In the same order, I told plaintiff that it was his responsibility to serve the defendants and I provided him written memoranda on how to accomplish service. Now defendants have moved to dismiss plaintiff's complaint for insufficiency of service of process.

Although plaintiff was provided with instructions on how to serve the defendants, he does not appear to have attempted to obtain waivers of service of a summons from the individual defendants before attempting to serve them personally. This is curious. Plaintiff could have avoided the costs of hiring a process server to serve his complaint if he had pursued this avenue. Now, however, it is too late for him to proceed in the manner

prescribed in Fed. R. Civ. P. 4(d), and as will become apparent, he has failed to show that he served the defendants individually in the manner required in order for this court to obtain personal jurisdiction over them.

Personal service of a summons and complaint upon a county may be accomplished by serving the chairperson of the county board or the county clerk, Wis. Stat. § 801.11(4)(a)1, or by leaving the summons and complaint in the office of such officer with the person who is apparently in charge of the office, § 801.11(4)(b). Personal service of a summons and complaint upon an individual is accomplished by 1) delivering the signed and sealed summons and a copy of the complaint to the defendant personally; or 2) leaving the summons and complaint at the defendant's house with a person of suitable age and discretion who lives there with the defendant; or 3) delivering the summons and complaint to an agent authorized by appointment or by law to receive service of process on the defendant's behalf. Fed. R. Civ. P. 4(e)(2).

The record in this case reveals that plaintiff has not accomplished proper service of his complaint on any of the defendants. The sheriff of Douglas County is Thomas Dalbec. According to Julie Myers, plaintiff's process server, she served both Dalbec and Hoyt on February 7 by leaving copies of plaintiff's summons and complaint with a Janis Cox at the front window of the sheriff's department suite. There is no indication on the return of service that Janis Cox is an agent authorized by appointment or law to receive service of process on Dalbec's or Hoyt's behalf. (In order to authorized by appointment to receive

service of process for Dalbec and Hoyt, these individuals would have to “designate [Cox] to perform the function, job, or duty of accepting service.” Mared Industries, Inc. v. Mansfield 690 N.W.2d 835, 847 (2005).

In addition, the record reveals that plaintiff did not serve the county chairperson or the county clerk with a summons and complaint for the defendant county. Instead, Ms. Myers served a summons and complaint on Steve Koszarek, the Douglas County Administrator, by leaving a copy of a summons and complaint with Denise Oderman, a person working in the county administrator’s office. Douglas Finn is the Chairman of the Douglas County Board and Susan Sandvick is the county clerk. Unless Steve Koszarek is the person in charge of the county chairman’s or clerk’s office, the county has not been served properly.

Defendants have asked the court to dismiss this case with prejudice if the court finds that the defendants have not been served properly. However, Fed. R. Civ. P. 4(m) allows a plaintiff 120 days after filing a complaint in which to serve the defendants. That time may be extended for an appropriate period upon plaintiff’s showing of good cause for his failure to serve within the time allowed under the rule. Id.

Plaintiff filed his complaint on December 29, 2004. The 120-day time period for serving his complaint expires on April 28, 2005, but I conclude that plaintiff has shown good cause for extending that time. Specifically, in opposing defendant’s motion to dismiss, plaintiff contends that his process server told him that the county administrator was the

proper person to serve on behalf of the county. With respect to defendant Hoyt, plaintiff asserts that Ms. Myers attempted to serve Hoyt at least five times in an eight-day period at his residence in Lake Nebagamon, Wisconsin. When these attempts failed, Myers placed calls to the sheriff's office in an unsuccessful effort to learn when Hoyt would be working. Finally, Myers took the summons and complaint to the sheriff's department and left it with the "intake officer." In plaintiff's view, the sheriff's department is "a normal place of abode" for defendant Hoyt, despite the fact that he cites no statute or law supporting this view.

I am not convinced that a person's work place is the same as his place of abode. Nor am I satisfied that any person authorized by appointment or law has agreed to accept service of process for the defendants. Nevertheless, given plaintiff's pro se status and the relative difficulty of understanding the rules governing service of process on a county, a sheriff and a sheriff's deputy, I will give plaintiff a short extension of time in which to accomplish proper service on the defendants. If plaintiff fails to submit proof of proper service on the defendants within the time allowed, I will dismiss this case.

Because this court presently lacks personal jurisdiction over the defendants, I am cancelling the preliminary pretrial conference set for April 21, 2005. It will be rescheduled upon receipt of plaintiff's proof that he has served the defendants in accordance with the applicable rules.

ORDER

IT IS ORDERED that defendant's motion to dismiss this lawsuit for insufficiency of service of process is DENIED.

Further, IT IS ORDERED that plaintiff may have an enlargement of time to May 13, 2005, in which to serve the defendants in accordance with this order and to submit proof of such service to this court. If, by May 13, 2005, plaintiff fails to show that he has served the defendants in accordance with the rules set out above, I will dismiss this case on the court's own motion for lack of jurisdiction over the defendants.

Entered this 20th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge