

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

ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

ORDER

Plaintiffs,

05-C-262-C

v.

FRED D. HOLLENBECK; TOM CASEY; DEBBIE KING;
SAUK COUNTY; JUDGES GUY REYNOLDS
AND EVENSON; DONNA MUELLER;
CARRIE WASTLICK; PEGGY; GENE WIEGAND;
BRANT BAILEY; CURAN HOLLENBECK AND ORTON, S.C.;
WAYNE MAFFEI; JENKS CROSS MERCER and MAFFEI LAW
FIRM; M&I BANK; DAVE GUTTER; KETTY W. BAUER;
DEBRA KING; MARK L. KRUEGER; WILLIAM
GREENHALGH; GREENHALGH and KRUEGER, S.C.;
THE BANK OF MAUSTON; ROBERT FAIT;
TOM SCHMIDT; KELLY HONNOLD;
SCOTT SCHMIDT; ADELA LUCARZ; and JOSEPH
LUCARZ;

Defendants.

Plaintiffs' original pleading in this case was dismissed on the court's own motion because it did not comply with Fed. R. Civ. P. 8. Subsequently, plaintiffs filed a second complaint dated June 2, 2005, which I accepted as the operative pleading. In an order dated June 10, 2005, I directed plaintiffs to serve the June 2 complaint on the defendants and

submit proof of service no later than July 29, 2005. I told plaintiffs that if, by July 29, 2005, they failed to submit proof of service of the June 2 complaint on defendants or show cause for their failure to do so, I would dismiss any defendant who had not been served unless plaintiffs could show that they would be likely to locate the unserved defendants within the time allowed under Fed. R. Civ. P. 4(m).

At the time I entered the June 10 order, the record revealed that defendants Judge Reynolds and Judge Evenson had moved to dismiss plaintiff's original complaint. Because the original complaint had been rejected by this court, I told defendants Reynolds and Evenson in the order that once they had been served with plaintiff's June 2 complaint, they could choose either to file a new responsive pleading or stand on the motion to dismiss they filed in response to the original complaint.

Subsequently, defendants Delain and Madison Freelance Reporters filed an answer on June 17, 2005, defendants M & I, Gitter, King, Maffei and Cross, Jenks, Mercer and Maffei moved to dismiss plaintiff's complaint on June 20, 2005, and defendants Krueger, Greenhalgh, Greenhalgh & Krueger, A. Lucarz and J. Lucarz answered and moved to dismiss the complaint on June 30, 2005. Unfortunately, briefing schedules were established on these later-filed motions to dismiss, despite the fact that it is not clear in the record whether the motions were filed in response to the rejected complaint or the one filed on June 2.

Now plaintiff Aleksandra Cichowski has filed documents titled "Motion for

Substitution of Judges,” “Motion to Dismiss all the Defendants Motion Filed Before July 29, 2005” and “Motion to Stay Proceedings due to the Fact that the Court Lacks Jurisdiction Over the Case Until July 30, 2005” (sic), together with affidavits in support.

As an initial matter, I note that plaintiff Cezary Cichowski has not signed any of the motions filed by Aleksandra Cichowski and it does not appear that Aleksandra Cichowski has served Cezary with copies of her submissions. When two plaintiffs are prosecuting a lawsuit pro se, one plaintiff cannot represent the interests of the other plaintiff. Each bears the responsibility for knowing exactly what tactical decisions are being made and what documents are being filed by the other. The court can be assured that this is happening in one of two ways: either both plaintiffs must sign every motion, letter or other document they wish to submit to the court for consideration; or, if only one plaintiff signs the item to be submitted, that plaintiff must show by affidavit or some other indication on the court's copy that he or she has served the other plaintiff with a copy. Of course, plaintiffs also must show that they have served their submissions on the defendants or the lawyer for the defendants, once the names of the lawyers are known. In this instance, plaintiff Aleksandra Cichowski not only failed to acknowledge that she served her submissions on her co-plaintiff, she does not show that she has served the defendants or their lawyers. Ordinarily, this would mean that the court could not give any consideration to the documents. However, in order to avoid further confusion and delay in the early going of this case, this time only

I will this enclose a copy of the submissions to defendants' counsel with a copy of this order.

Plaintiff Aleksandra Cichowski's motion for substitution of judges will be denied, because she suggests no reason why she wants the substitution and has made no showing that I should be disqualified or recuse myself from the proceedings. She simply states that she wants a judge "outside the State of Wisconsin [to] preside over the proceedings. Because she has not given a reason for recusal, I will remain the presiding judge.

In the motion to stay proceedings, plaintiff Aleksandra Cichowski suggests that until the defendants have been served with plaintiffs' complaint, this court lacks jurisdiction over the case. She asks that the case be "put on hold" until plaintiffs serve defendants "so the court can acquire jurisdiction"

Plaintiff is incorrect when she says that this court lacks jurisdiction over the case until the defendants have been served. In Moore v. Olson, 368 F.3d 757, 759-760 (7th Cir. 2004), the Court of Appeals for the Seventh Circuit explained that the word "jurisdiction" can have many different meanings in federal cases.

. . . the word "jurisdiction" is such a chameleon, referring (according to context) to the adjudicatory competence of the court, the amenability of the defendant to process in the district, the territory of the judicial district, the time at which critical documents (e.g., a claim in bankruptcy) are filed, and many other subjects If Congress has authorized federal courts to resolve particular claims, and if the claim presents a case or controversy within the scope of Article III, then federal courts have subject-matter jurisdiction.

In their complaint, plaintiffs allege violations of their constitutional rights under the First,

Fourth, Seventh and Fourteenth Amendments. Congress has authorized the federal judiciary to resolve constitutional claims such as those that plaintiffs are alleging. Therefore, this court has jurisdiction to decide the claims in plaintiff's complaint.

Whether the court has personal jurisdiction over the defendants is another matter. All of the defendants appear to reside in Wisconsin. So far, no defendant has contested service of process and likely will not do so as long as plaintiffs follow the directions for serving their complaint set out in Fed. R. Civ. P. 4.

Nevertheless, in an effort to avoid further confusion in this case, I will rescind the schedules for briefing defendants' motions to dismiss until plaintiffs have filed proof of service of their June 2 complaint on the defendants. Once defendants have been served with the June 2 complaint, they may file a new response or advise the court that they intend to stand on their responses to plaintiff's original complaint. If defendants advise the court that they wish their motions to dismiss to stand as their response to the June 2 complaint, I will establish a new schedule for briefing the motions.

Plaintiff Aleksandra Cichowski's motion to "dismiss all the defendants motion filed before July 29, 2005" will be denied as moot. In light of this order, those motions will have no force or effect unless defendants designate them as their response to the June 2 complaint.

ORDER

IT IS ORDERED that

1. Plaintiff Aleksandra Cichowski's "Motion for Substitution of Judges" is DENIED;
2. Plaintiff Aleksandra Cichowski's "Motion to Dismiss all the Defendants Motion Filed Before July 29, 2005" is DENIED; and

3. Plaintiff Aleksandra Cichowski's "Motion to Stay Proceedings due to the Fact that the Court Lacks Jurisdiction over the Case until July 30, 2005" is GRANTED in part. The schedules established for briefing the motions to dismiss filed by defendants M & I, Gitter, King, Maffei and Cross, Jenks, Mercer and Maffei and defendants Krueger, Greenhalgh, Greenhalgh & Krueger, A. Lucarz and J. Lucarz are RESCINDED.

4. Once defendants have been served with plaintiffs' June 2, 2005 complaint, they must file a new response to that complaint or advise the court that they intend to stand on the response they filed to the original complaint.

Entered this 15th day of July, 2005.

BY THE COURT:



BARBARA B. CRABB
District Judge