

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; MARK L. KRUEGER;
THE BANK OF MAUSTON; ROBERT FAIT;
TOM SCHMIDT; KELLY HONNOLD; and
SCOT SCHMIDT,

Defendants.

In an order entered in this case on August 15, 2005, I dismissed defendants Ketty (Kelly) Bauer, Debra King, William Greenhalgh and Greenhalgh and Krueger, S.C. from this action for plaintiffs' failure to show that they have served these defendants with their June 2, 2005 complaint. In addition, I granted plaintiffs an extension of time to August 22, 2005, in which to submit proof that they had served their complaint on defendants Carrie Wastlick

and Peggy and I granted plaintiffs' request for the voluntary dismissal of defendants Joseph and Adela Lucarz. Now plaintiffs have filed a "Motion to Reinstate Attorney Krueger and Greenhalgh and Krueger as well as Debra King. . . ." and a "Motion for Default Judgment Against Honorable Judge Reynolds and Honorable Judge Evenson." Unfortunately, once again plaintiffs have failed to submit certification that they mailed their motions to all of the lawyers representing the various defendants remaining in this suit. Plaintiffs show that they mailed their motions for default judgment and to reinstate to David Rice, Wayne Maffei and Mark Krueger, but not to Thomas Casey or Daniel Jardine, who represent eleven of the twenty-two remaining defendants. Enclosed to plaintiffs with a copy of this order is a copy of the docket sheet in their case. Plaintiffs should take note of the list of names and addresses of the lawyers representing the various defendants in their case and insure that in future submissions, they show clearly on the court's copy that they have served each and every one of them with a copy of the documents they wish the court to consider. Because the motions must be denied in any event, I am on this one occasion enclosing a copy of plaintiffs' recent motions to Messrs. Casey and Jardine together with a copy of this order.

Defendants Reynolds and Evenson have not defaulted in this case. On July 21, 2005, they advised plaintiffs and the court that they intend to stand on the motion to dismiss they filed in response to plaintiffs' first complaint, which was dismissed for plaintiffs' failure to comply with Fed. R. Civ. P. 8. This means that their earlier filed motion to dismiss is being

considered as their response to plaintiffs' amended complaint. Because neither defendant Reynolds nor defendant Evenson has failed to defend against plaintiffs' action, entry of default is not appropriate.

With respect to plaintiffs' motion to reinstate defendants Krueger, Greenhalgh and Krueger, S.C. and Debra King, plaintiffs have made no showing that these former defendants have been served properly with the operative complaint. It is true that plaintiffs have submitted proof that they served a defendant Debbie King, whose name now has been changed to Debbie Frisch. However, plaintiffs named two separate Kings as defendants in their complaint, a Debbie King and a Debra King. In their complaint, plaintiffs allege that Debbie King (Frisch) is an employee of the law firm of Curran, Hollenbeck & Orton. That Debbie King has been served with plaintiffs' complaint and remains a party to the suit. Plaintiffs allege that Debra King is an adult resident of Wisconsin who "filled out mortgage papers for the M&I Bank in Mauston," although she is "not an employee of the bank." It is this Debra King who has been dismissed from this case. Nothing in plaintiffs' motion suggests that the dismissal was in error.

Two additional matters require attention. First, in this court's order of August 15, 2005, I gave plaintiffs an enlargement of time to August 22, 2005, in which to submit proof of service of their complaint on defendants Carrie Wastlick and "Peggy," who plaintiffs describe in their complaint as a "financial clerk at the [Sauk County] Courthouse" in

Baraboo, Wisconsin. I told plaintiffs that if they failed to submit proof of service of their complaint on defendants Waistlick and Peggy by August 22, 2005, those defendants would be dismissed from the case. Now the court's record reflects that plaintiffs obtained a waiver of summons form from defendant Carrie Wastlick. However, plaintiffs have not submitted proof that defendant Peggy has been served with their complaint. Therefore, she will be dismissed from this case.

Second, plaintiff Cezary Cichowski has filed an affidavit in which he states that he is waiving his right to receive notification of service of any legal and non-legal papers filed by Aleksandra Cichowski. This waiver is invalid. As I told plaintiffs in this court's order of July 15, 2005, when two plaintiffs are prosecuting a lawsuit pro se, one plaintiff cannot represent the interests of the other plaintiff and each plaintiff 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 only 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. Plaintiff Cezary Cichowski's willingness to allow plaintiff Aleksandra Cichowski to refrain from serving him with copies of her submissions is unacceptable and in violation of Fed. R. Civ. P. 5, which requires that all submissions to

the court be served on all of the other parties to the lawsuit or, if a party is represented by counsel, on counsel. Plaintiff Cezary Cichowski is not represented by counsel. If he does not sign plaintiff Aleksandra Cichowski's submissions, then without exception the submission must show that a copy was given to Cezary Cichowski.

ORDER

IT IS ORDERED that

1. Plaintiffs' "Motion to Reinstate Attorney Krueger and Greenhalgh and Krueger as well as Debra King. . . ." and "Motion for Default Judgment Against Honorable Judge Reynolds and Honorable Judge Evenson" are DENIED.

2. Defendant "Peggy" is DISMISSED from this case for plaintiffs' failure to submit proof of service of their complaint upon her.

Entered this 13th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge