

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

JEFFREY STEVEN AKRIGHT,

Plaintiff,

v.

SHERIFF DAVID GRAVES;
STEPHEN A. CULLINAN, Doctor;
E. PETERS, Head Nurse; L. BAKER, Nurse;

Defendants.

ORDER

05-C-27-C

On January 31, 2005, I screened plaintiff's complaint under 28 U.S.C. § 1915A and allowed him to proceed on his claim that defendants Graves, Cullinan, Peters and Baker violated his rights under the Eighth Amendment by failing to respond to his need for medical treatment of an ankle injury. In addition, I told plaintiff that because he is not proceeding in forma pauperis, he is responsible for serving his complaint on the defendants and that he must submit proof of service when service is complete. At the same time, I provided plaintiff with a memorandum describing how to serve individuals in a federal lawsuit and the various forms he needed to accomplish service. Now 60 days have passed and plaintiff has not yet filed proof that he has served the defendants with his complaint.

Fed. R. Civ. P. 4(m), allows a plaintiff 120 days after filing a complaint in which to serve the defendants, but the 120-day deadline is the outside limit. If a plaintiff acts diligently, he should be able to serve his complaint on the defendants and file proof of service much sooner than that. Plaintiff has not written to explain his failure to submit proof of service of his complaint on the defendants or corresponded with the court about his case at all except in early February, when he moved for and was denied appointment of counsel.

At this point, I believe it is prudent to require plaintiff to communicate to the court in writing what steps he has taken to serve his complaint on the defendants. Although the outside deadline for serving the complaint does not occur until May 31, 2005, there is no point in maintaining this action as an open case if plaintiff has abandoned prosecution of it.

ORDER

Now, therefore, IT IS ORDERED that plaintiff may have until April 22, 2005, in which to advise the court in writing what steps he has taken to serve his complaint on the defendants. If, by April 22, 2005, plaintiffs fail to respond to this order, the clerk of court is to enter judgment dismissing this action without prejudice for plaintiff's failure to

prosecute.

Entered this 1st day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge