

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

VINCENT L. AMMONS,

Plaintiff,

v.

DR. DEBB LEMKE,
DR. BRUCE GERLINGER,
RENEE ANDERSON,
BECKY DRESSLER and
RITA ERICSON,

Defendants.

ORDER

06-C-20-C

Plaintiff Vincent Ammons does not qualify for pauper status under 28 U.S.C. § 1915 because he has filed three or more lawsuits in federal court while he was a prisoner that were dismissed as legally meritless. 28 U.S.C. § 1915(g). For that reason, plaintiff paid the fee for filing this lawsuit. His complaint was then screened pursuant to 28 U.S.C. § 1915A and, in an order dated March 31, 2006, I allowed plaintiff leave to proceed against one defendant, Dr. Debb Lemke, on two claims that she was deliberately indifferent to plaintiff's alleged serious medical needs. I denied plaintiff leave to proceed on all of his claims against the remaining defendants. Subsequently, in an order dated August 9, 2006, I granted

plaintiff's motion to reconsider and allowed him to proceed on a claim of deliberate indifference to a serious medical need against defendants Anderson, Dressler, Ericson and Gerlinger. At that time, I told plaintiff that he would have to arrange immediately for service of process of his complaint on the defendants and that if, by October 6, 2006, he failed to submit proof of service of his complaint on them, I would dismiss his action for his failure to prosecute it unless he could show good cause for his failure to accomplish service.

Now, plaintiff has submitted copies of postal receipts as purported proof of service of his complaint on defendants Lemke, Anderson, Dressler and Ericson. In addition, he has moved for a sixty-day enlargement of time in which to submit proof of service of his complaint on defendant Gerlinger. Because plaintiff's submission is insufficient to show that service of process is complete with respect to any defendant, I will grant him an extension of time in which to satisfy his obligation to submit proof that the defendants either waived service of a summons as required by Fed. R. Civ. P. 4(d)(4) or were served with a summons and complaint in compliance with Fed. R. Civ. P. 4(e).

In an effort to prove that he served defendants Lemke, Anderson, Dressler and Ericson with his complaint, plaintiff states in an affidavit that he arranged in mid-August, 2006, to have a friend who lives in Phoenix, Arizona mail to each of the defendants a packet containing his complaint and the necessary forms to obtain waivers of service of a summons. To prove that the packets were mailed to the defendants, plaintiff has submitted copies of

certified mail receipts showing that on September 6, 2006, his friend posted mail to the defendants. Although plaintiff contends that he presently possesses postal return receipts showing that on September 8, an Officer Richards signed for the mail addressed to defendants Anderson, Dressler and Ericson and that on September 30, 2006, defendant Lemke signed for the mail addressed to her, plaintiff has not submitted copies of those receipts. Even if he had, the postal receipts by themselves do not constitute proof of service.

Ordinarily, when a plaintiff utilizes the services of someone other than the United States marshal or a deputy marshal to effect service of process, proof of service is made by submitting the affidavit of the person making service in which the affiant either 1) attaches a receipt signed by the defendant or the defendant's authorized representative showing that the addressee received the summons and complaint (in this event, the affiant must also attest to the receipt's authenticity); or 2) avers that on a particular date at a particular time and place, he or she delivered a summons and complaint into the hands of the defendant or someone authorized by law to accept service on behalf of the defendant. Fed. R. Civ. P. 4(*l*). In the event that the defendant waives service of a summons, Rule 4(d)(4) allows the plaintiff to submit a copy of the signed waiver of service form to the court instead of the proof of service required under Rule 4(*l*).

If plaintiff properly sought signed waiver forms from each of the defendants by mailing each one a service packet conforming to the requirements of Rule 4(d) on

September 6, 2006, he should have expected that signed waiver forms would be returned to him no earlier than 30 days following the date on which he sent the requests for waiver, that is, no earlier than October 6, 2006. Fed. R. Civ. P. 4(d)(1)(F). If, as it now appears, defendant Lemke did not receive plaintiff's service packet until September 30, 2006, she will have at least until October 30, 2006 in which to sign and return the waiver form. Therefore, I will extend to November 6, 2006, the date by which plaintiff must submit copies of the signed waiver forms from defendants Lemke, Anderson, Dressler and Ericson.

As for defendant Gerlinger, plaintiff has 120 days from August 9, 2006, the date on which he was allowed to proceed against Gerlinger, in which to accomplish service on him either by obtaining a signed waiver form from him or serving him personally with a summons and complaint. Fed. R. Civ. P. 4(m). One-hundred-twenty days from August 9 is December 7, 2006. Although I prefer service to be accomplished long before that date, plaintiff is entitled to pursue service up until that time under the rules governing federal civil actions.

ORDER

IT IS ORDERED that

1) plaintiff is to submit no later than November 6, 2006, a copy of all waiver forms he receives from the defendants; and

2) if, by November 6, 2006, any one defendant has not returned a signed waiver form to him, he must arrange immediately to serve that defendant individually with a summons and complaint and file proof of such service with the court no later than December 7, 2006. Blank summons forms are enclosed to plaintiff with this order in the event he needs to use them.

Further, IT IS ORDERED that plaintiff's motion for an enlargement of time in which to serve defendant Gerlinger with his complaint is GRANTED. Such service, whether accomplished by obtaining a signed waiver form or delivering a summons and complaint to the defendant personally, must be complete no later than December 7, 2006.

Finally, IT IS ORDERED that if, by December 7, 2006, plaintiff fails to submit proof that he has served any one defendant with his complaint, that defendant will be dismissed from the action without prejudice to plaintiff's filing a new lawsuit against him or her at a later date.

Entered this 12th day of October, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge