

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

TIMOTHY FRANCIS RIPP,

Plaintiff,

v.

ORDER

10-cv-492-bbc

JANET NICKEL, MARC CLEMENTS,
GREGORY GRAMS, AL MORRIS,
ANTHONY ASHWORTH and WILLIAM POLLARD,

Defendants.

Defendants have filed an interlocutory appeal of this court's order requiring defendant William Pollard to provide plaintiff Timothy Francis Ripp the postage he needs to file his summary judgment materials, which plaintiff has estimated at \$10.50. Dkt. #54, ¶ 12. Accompanying their notice of appeal is a motion to stay the order pending appeal. Dkt. #59. I am denying the motion because defendants have failed to explain why they are entitled to a stay.

Defendants say only that the issue will be "rendered moot" without a stay and that the issue is "important . . . in the wake of Wis. Stat. § 301.328," but they do not develop an argument on either point. With respect to the mootness issue, it is true that defendants

cannot get the postage back once the materials are mailed, but that does not mean that the issue would be moot. If defendants prevail on appeal, they will be entitled to charge plaintiff for the cost of postage and they may obtain a ruling that would govern future requests for legal supplies from plaintiff. It is unclear why defendants are citing Wis. Stat. § 301.328 because this court has not prohibited them from enforcing that statute. Further, because I relied on the particular facts of the case in issuing the order, it would not prevent defendants from arguing in any other case that the prisoner was not entitled to legal supplies.

In sum, defendants have failed to show that it is appropriate to stay this case so that they may seek an interlocutory ruling over \$10.50 in postage.

ORDER

IT IS ORDERED that the motion filed by defendants Janet Nickel, Marc Clements, Gregory Grams, Al Morris, Anthony Ashworth and William Pollard to stay the case pending

appeal, dkt. #59, is DENIED.

Entered this 30th day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge