

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

TONY WALKER,

Plaintiff,

v.

JON E. LITSCHER, DANIEL R. BERTRAND,
PATRICK BRANT, FRANCIS LARDINOIS,
RICHARD JAUQUET, GLEN RIPLEY and
WENDY BRUNS,

Defendants.

ORDER

02-C-135-C

A telephone status conference was held in this case on November 7, 2002, before United States District Judge Barbara B. Crabb in response to a motion for a preliminary injunction filed by plaintiff Tony Walker. Plaintiff participated on his own behalf. Defendants appeared by Assistant Attorney General Joely Urdan.

In his motion for a preliminary injunction, plaintiff asserted that he is indigent, has exceeded his annual legal loan limit and has been unable to communicate with the court because defendant Daniel Bertrand has refused to provide him with envelopes. Plaintiff noted that this interference with his ability to communicate with the court resulted in his inability to oppose defendant's motion to dismiss his Eighth Amendment claim on the ground that he had failed to oppose it. Plaintiff sought both an order directing defendants to provide him with legal supplies at state expense for as long as he is proceeding

pro se and reconsideration of the court's August 27, 2002 order dismissing the Eighth Amendment claim.

After hearing from plaintiff and defense counsel, I denied plaintiff's motion for a preliminary injunction because he failed to show that he followed the proper procedures in obtaining an exception to the legal loan limit. There was no evidence that defendant would deny a legitimate request for legal supplies made in response to a court order if plaintiff had followed the proper procedure. Because plaintiff did not show that he made a proper request, his motion to reconsider the order dismissing his Eighth Amendment claim was denied.

Although I did not address it at the status conference, I note that plaintiff also has filed in this case a "Motion for Court to Order U.S. Marshals to Serve All Process on All Named Defendants." This motion has two parts. First, plaintiff asks that the Marshals Service serve Lora Hallet, who is no longer employed by the Wisconsin Department of Corrections. However, plaintiff's only claim against Hallet was his Eighth Amendment claim, which has been dismissed. Therefore, plaintiff's motion to have the Marshall's Service serve Hallet with his complaint will be denied as moot.

Second, plaintiff asks that all of the remaining defendants be served by the Marshals Service, even though the attorney general's office has already accepted service on behalf of those defendants. Apparently, plaintiff believes that at some later date defendants will move to dismiss the case on the ground that they have been improperly served. However, defendants have not moved to dismiss this case for lack of proper service of process. Because defects in service can be waived, see Petrowski v. Hawkeye -Security Insurance Co., 350 U.S. 495 (1956), and because defendants have already accepted

service of process as having been properly made, plaintiff's motion will be denied as unnecessary.

Finally, at the telephone status conference I set the deadline for defendants to answer plaintiff's complaint and to file dispositive motions. (Defendants withdrew their motion for summary judgment on plaintiff's First Amendment claim.) Defendants may have until November 27, 2002, in which to file an answer. The parties may have until February 17, 2003, in which to file dispositive motions. Opposing materials are to be served and filed no later than March 17, 2003. Replies are due no later than March 27, 2003. In briefing any motion for summary judgment in this case, the parties are to observe this court's Procedures To Be Followed on Motions for Summary Judgment, a copy of which was sent to them with

the order dated August 27, 2002.

ORDER

IT IS ORDERED that

1. Plaintiff Tony Walker's motion for a preliminary injunction is DENIED.
2. Plaintiff's motion to reconsider the order dismissing his Eighth Amendment claim is DENIED.
3. Plaintiff's "Motion for Court to Order U.S. Marshals to Serve All Process on All Named Defendants", including former defendant Lora Hallet, is DENIED.
4. Defendants may have until November 27, 2002, to file an answer to plaintiff's complaint. The parties may have until February 17, 2003, in which to file dispositive motions. Opposing materials are to be served and filed no later than March 17, 2003. Replies are due no later than March 27, 2003.

Entered this 12th day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge