

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

STEVEN CASPERSON, MATTHEW FRANK,
JON E. LITSCHER, LAURA WOOD,
GERALD BERGE, PETER HUIBREGTSE,
GARY BOUGHTON, VICKI SEBASTIAN,
CPT. TIMOTHY HAINES, LINDA HODDY,
CINDY O'DONNELL, LT. GARDINER,
JULIE BIGGAR, SGT. HANKE, TODD OVERBO,
SANDRA GRONDIN, JoANNE GOUIERE (JANE DOE),
MIKE VANDERLOH, RON KOPLITZ, ELLEN RAY,
GARY McCAUGHTRY, MARC CLEMENTS,
DEBRA TETZLAFF, CPT. STEVE SCHUELER,
C.O. WATSON, CHAPLAIN FRANCIS,
BYRON BARTOW, KATHLEEN BELLAIRE,
and STEVE SPANBAUER,

Defendants.

ORDER

02-C-473-C

Plaintiff has filed a document titled, "Notice and Motion for Time Extension for Responding to Defendants' Summary Judgment Motion and for Objecting to Magistrate Judge's Discovery Ruling, Objection to Magistrate Judge's 12-28-04 Order and Suggestion

to Correctly File an Order and Affidavit in Support.” The portion of the motion “. . . Suggestion to Correctly File an Order” is moot. The court’s typographical error in numbering the caption of an order entered in his habeas corpus action with the number of this case was corrected on January 3, 2005, in an order entered in Lindell v. Berge, 04-C-249-C. Therefore, I will address plaintiff’s remaining motion for additional time to oppose defendants’ motion for summary judgment and object to the magistrate’s judge’s December 28, 2004 order.

Plaintiff’s request for additional time to object to the magistrate judge’s December 28, 2004 order will be denied as unnecessary. Pursuant to Fed. R. Civ. P. 72(a), plaintiff had ten days from the date of service of the magistrate judge’s order in which to file objections. According to the mailing stamp affixed to the face of the December 28 order, service of the order upon the parties was not accomplished until December 29, 2004. Fed. R. Civ. P. 6(a) provides that “[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” Plaintiff’s motion, which includes his objections to the December 28 order, was received by the court on January 10, 2005. Under Houston v. Lack, 487 U.S. 266 (1988), plaintiff’s motion is timely if it is delivered to prison authorities within the applicable time limit. In this case, the applicable time limit expired on January 11, 2005 (excluding weekends and December 31, which was a federal holiday). Therefore, plaintiff’s objection is timely.

Nevertheless, plaintiff's objections to the magistrate judge's order are not well taken.

The standard for reviewing a pretrial order of a magistrate judge is whether it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Plaintiff argues that the magistrate judge should not have ordered the unredacted copy of "88 Precepts" sealed in the court's record, because members of the public should be able to view and obtain copies of the document. In plaintiff's view, the justification relied on by the magistrate for sealing the document, that to preserve the status quo, the court must keep the document sealed to insure that prisoners do not obtain a copy from the court's file, is not supported by case law. Neither of the cases plaintiff cites in support of his position addressed the question whether written materials that has been designated as contraband in the prison setting may be sealed in litigation challenging the constitutionality of the contraband designation. Thus, nothing in plaintiff's objections to the magistrate judge's December 28 order convinces me that it was clearly erroneous or contrary to law for the magistrate judge to order the unredacted copy of "88 Precepts" to be sealed.

I turn then to plaintiff's motion for an enlargement of time in which to oppose defendants' motion for summary judgment. Plaintiff says he needs more time to oppose the motion because 1) defendants' motion includes a 70-page brief, almost 700 proposed facts and thousands of pages of evidentiary material; 2) he has to handwrite his response and the copies to be served on defense counsel and retained for his own file; and 3) he might need

to use evidence in response to the motion that the magistrate judge ordered be turned over to him in response to his most recent motion to compel. Plaintiff's concerns are largely unpersuasive. It is plaintiff who chose to fatten this case with multiple issues against multiple defendants. He could have been more selective and limited the size of his complaint. Moreover, plaintiff chose to devote his time to filing a cross-motion for summary judgment, instead of focusing on defendants' motion and adding factual propositions where appropriate in response to their proposed facts. His ill-conceived tactical moves do not warrant an order that will squeeze the court out of its time to decide the motions in advance of the firmly set trial date of March 21, 2005. Moreover, the deadline for filing and briefing dispositive motions has already been moved once to accommodate plaintiff's claimed discovery and copying problems. See Magistrate Judge Crocker's Order of Nov. 16, 2004. Nevertheless, I will adjust the schedule slightly, in an exaggerated effort to insure fair play.

Finally, I will not grant plaintiff an extension of time to object to the magistrate's discovery order dated December 29, 2004.

ORDER

IT IS ORDERED that

1. Plaintiff's motion for additional time to object to the magistrate judge's December 28, 2004 discovery order is DENIED as unnecessary.

2. Plaintiff's request for modification of the magistrate judge's December 28, 2004 discovery is DENIED for plaintiff's failure to show that the decision is clearly erroneous or contrary to law.

3. Plaintiff's motion for an enlargement of time to oppose defendants' motion for summary judgment is GRANTED. Plaintiff may have until January 21, 2005, in which to oppose the motion. Defendants may have until January 31, 2005, in which to serve and file a reply.

4. Plaintiff's motion for an enlargement of time to object to the magistrate judge's December 29, 2004 discovery order is DENIED.

Entered this 14th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge