

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

THOMAS L. SCHROEDER,

Plaintiff,

v.

TONY GOTH,
MARK THOMPSON and
JON RYAN PETERSON,

Defendants.

ORDER

03-C-0299-C

When the United States marshal filed process return forms with the court indicating the status of his efforts to serve the defendants in this case with plaintiff's complaint, I read one of the forms to indicate that the Marshal had not been able to serve defendant Peterson with plaintiff's complaint because this defendant was no longer employed at the Rock County jail. In an order entered on August 28, 2003, I asked the Marshal to submit additional information about his efforts to locate Peterson and, if those efforts did not include an Internet search of public records for defendant Peterson's current address, to pursue this avenue and advise the court of the results of the effort in the remarks section of the process receipt and return the form. Subsequently, I have learned that defendant Peterson was served personally with plaintiff's complaint on August 13, 2003 and that all

of the defendants answered the complaint on August 22, 2003. Therefore, the order dated August 28, 2003 will be rescinded.

Separately, plaintiff has filed a document titled "Plaintiff's Response to Defendants' Answer to Complaint," in which he replies to factual statements made in the answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(a) provides that a party is deemed to deny averments in pleadings to which a response is not allowed. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court considers that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that the order entered herein on August 28, 2003 is RESCINDED.

Further, IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file but will not be considered.

Entered this 23rd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge