

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

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FRANCIS E. ALTMAN,

Plaintiff,

v.

ORDER

03-C-371-C

MARATHON COUNTY JAIL ADMINISTRATOR  
ROBERT DICKMAN; MICHAEL SCHAEFER;  
KARA MOHR and CARRY PELLOWSKI,

Defendants.  
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Plaintiff's motion for leave to file a second amended complaint to put in evidence of mail that was withheld from him at the Marathon County Jail on the ground that it did not contain a return name and address is DENIED. Plaintiff is already proceeding on his First Amendment claim challenging defendants' refusal to deliver mail to him because it did not contain a return name and address. He is free to submit evidence of his claims on a motion for summary judgment or at trial. He does not need to amend his complaint to include evidence. Indeed, the function of a complaint is simply to put the defendants on notice of the claims plaintiff intends to prove against them. See Fed. R. Civ. P. 8. ("A pleading . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . (2) a short and plain statement of the claim . . . and (3) a demand

for . . . relief . . .”). Plaintiff already has done that.

Likewise, I will deny plaintiff leave to amend his complaint to allege that three letters and two pictures that were withheld from him were not in his property bag when he was released as “jail rule V, B3” requires. Contrary to plaintiff’s belief, a claim that jail officials violated jail rules does not amount to a claim of denial of due process in violation of the Fourteenth Amendment to the United States Constitution. As long as post-deprivation remedies are available at the state level, neither intentional nor negligent deprivation of property gives rise to a constitutional violation. Daniels v. Williams, 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517 (1984). In Hudson, the United States Supreme Court held that an inmate has no due process claim for the intentional deprivation of property not occurring pursuant to established state procedures, if the state has made available a suitable post-deprivation remedy. In Daniels, the Court concluded that a due process claim does not arise from a state official's negligent act that causes unintended loss of or injury to property.

The State of Wisconsin provides several post-deprivation procedures for challenging the taking of property. According to Article I, § 9 of the Wisconsin Constitution, “[e]very person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without delay, conformably to the laws.” Sections 810 and 893 of the Wisconsin Statutes provide plaintiff with replevin and tort remedies. Section 893 contains provisions concerning tort actions to recover damages for

wrongfully taken or detained personal property and for the recovery of the property. Because the state has not refused to provide plaintiff with a post- deprivation remedy, and the existence of these remedies defeats any possible claim he might have that defendants deprived him of his property without due process of law, plaintiff may not amend his complaint to add a property deprivation claim.

ORDER

IT IS ORDERED that plaintiff's motion for leave to file a second amended complaint is DENIED.

Entered this 14th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge