

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

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TITUS HENDERSON,

Plaintiff,

v.

DAVID BELFUEL, in his individual and official capacity, JEFFREY ENDICOTT, in his individual and official capacity, SUZANNE DEHAAN, in her individual and official capacity, SCOTT ECKSTEIN, in his individual capacity, JANELLE PASKE, in her individual capacity, DAVID TARR, in his individual capacity, SANDRA HAUTUMAKI, in her individual capacity, CINDY O'DONNELL, in her official capacity, HERB DEHN, PAUL RUHLAND and JUDY CHOJNASKI,

Defendants.

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ORDER

03-C-729-C

Plaintiff has filed a letter dated August 3, 2004, in which he appears to be objecting to the magistrate judge's July 26, 2004 order 1) granting defendants' motion for an extension of time in which to respond to plaintiff's June 23, 2004 interrogatories and request for production of documents, and 2) refusing to consider plaintiff's motion dated July 14, 2004, to compel defendants to respond to documents requested and interrogatories propounded

“on June 3, June 4, 2004.” I construe these submissions as motions for reconsideration of the July 26 order pursuant to 28 U.S.C. § 636(b)(1)(A).

In deciding whether to reconsider any pretrial matter determined by a magistrate judge, the court must find that the magistrate judge's order is clearly erroneous or contrary to law. I have reviewed the ruling plaintiff challenges and conclude that the magistrate judge's disposition of plaintiff's motion to compel was not clearly erroneous, despite the fact that the ground for refusing to consider the motion was mistaken.

Plaintiff points out correctly that the magistrate judge's decision to refrain from considering his motion to compel was grounded on the magistrate judge's assumption that the motion had not been served on the defendants. However, the record reveals that plaintiff's July 14 motion to compel contains a “cc” to “Hoel, A.A. Gen. and Mundt, Atty.” Moreover, on July 21, 2004, the defendants represented in this case by Assistant Attorney General David Hoel filed a response to the motion to compel, confirming that at the least, Assistant Attorney General Hoel had been served with the motion. These two factors together appear to indicate clearly that plaintiff served his motion to compel on the defendants.

Nevertheless, even if the magistrate judge had considered plaintiff's motion to compel, he could have denied it on the ground that plaintiff failed to show that he served his *June 3 and June 4* interrogatories and request for production of documents on the defendants.

In defendants' response to the motion to compel, Assistant Attorney General Hoel represents that he received only one discovery request from plaintiff, a document titled "Plaintiff's Interrogatories and Request for Productions of Documents," which is dated June 23, 2004. A copy of the document is attached to defendants' response. Plaintiff did not file a reply to defendants' response to the motion to compel. Nor did he file true and accurate copies of the purported June 3 and June 4 interrogatories and request for production of documents he claims he served on the defendants. Instead, he filed with the motion to compel two handwritten "exhibits," each titled "Plaintiff's Interrogatories and Request for Production of Documents," both of which are dated July 10, 2004. These documents are not duplicates of the June 23, 2004 discovery requests in defendants' possession.

In his order, the magistrate judge assumed that plaintiff's June 23 "interrogatories and request for production of documents" was one and the same document as plaintiff's alleged June 3 and 4 discovery requests, despite the fact that the dates did not match up. He then granted the defendants' request for an enlargement of time in which to respond to the discovery. In the magistrate judge's view, this extension would moot plaintiff's motion to compel, even if he could consider the motion.

Plaintiff does not support his motion for reconsideration of the magistrate judge's order with clarification of the discrepancies in the dates of plaintiff's purported discovery requests or with copies of his June 3 and June 4 discovery requests. His failure to provide

proof that he served the defendants with discovery requests dated June 3 and June 4, 2004, is fatal to his motion to compel.

ORDER

IT IS ORDERED that plaintiff's motion pursuant to 28 U.S.C. § 636(b)(1)(A) for reconsideration of the magistrate judge's July 26 order denying his motion to compel is GRANTED. Plaintiff's motion to compel is DENIED on the ground that plaintiff failed to show that he served discovery requests dated June 3 and June 4 on the defendants.

Entered this 18th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge