

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

JONATHON H. BEDFORD,

Plaintiff,

v.

NEIGHBORHOOD CONNECTIONS,

Defendant.

MEMORANDUM

04-C-0978-C

In an order entered on June 6, 2005, I found that plaintiff Jonathon H. Bedford had submitted to this court an altered copy of a complaint he had filed with the Equal Rights Division of the Wisconsin Department of Workforce Development. As a sanction for this action, I ordered plaintiff to pay defendant Neighborhood Connections the sum of \$350.00 to partially offset the expenses it was forced to incur in bringing a motion to dismiss the claims of workplace discrimination that plaintiff had never raised before the Equal Rights Division. I informed plaintiff that if he did not make the payment by July 8, 2005, this case would be dismissed. In addition, I dismissed all of plaintiff's discrimination claims with the exception of the two (race and sex) that appeared on the unaltered copy of the Equal Rights

Division copy of his complaint.

Choosing not to comply with the order, plaintiff filed a notice of appeal from the June 6 order dismissing his additional discrimination claims and imposing a monetary sanction on him. In an order entered on July 1, 2005, I construed plaintiff's notice of appeal as his decision not to comply with the June 6 sanctions order. I construed it also as including a request for leave to proceed on appeal in forma pauperis. I declined to certify that the appeal was not taken in good faith. In addition, I added language to the effect that I would dismiss the case without prejudice to plaintiff's re-filing it after he paid the costs imposed as a sanction for filing a fraudulent document.

Defendant has objected to dismissal of the case without prejudice and the suggestion that plaintiff would be allowed to re-file his case at such time as he pays the costs imposed upon him. It argues that by not dismissing the case with prejudice, the court would be giving plaintiff a free pass to take an appeal and then pay the sanction and re-file his case if he loses the appeal, requiring defendant to incur the costs of an appeal and a second round of litigation in this court. Defendant asserts that this would be an unnecessary and financially devastating drain on its limited resources.

I am persuaded that defendant is correct. In order to continue his litigation in this court, plaintiff must pay the sanctions imposed on him. Corley v. Rosewood Care Center, Inc., 142 F.3d 1041, 1057 (7th Cir. 1998) ("when a party or its counsel are sanctioned in

the course of litigation, immediate payment of the sanction is the cost the two must bear for the privilege of continuing to litigate. The propriety of the sanction may then be challenged on appeal once there is a final decision in the case, even if that is long after the sanction was paid.”); Cleveland Hair Clinic, Inc. v. Puig, 104 F.3d 123, 126 (7th Cir. 1997). If he chooses not to pay, the case will be dismissed with prejudice.

In order to make the dismissal without prejudice, I am asking the court of appeals to remand the case so that I can enter an order making it clear that plaintiff must comply with the sanction imposed on him or forgo the opportunity to litigate his suit, even if he should succeed on appeal in showing that the sanction should not have been imposed.

Because plaintiff may not have understood that he could not avoid dismissal with prejudice without complying with the sanction even by taking an appeal, once the case is remanded from the court of appeals, I will give plaintiff a short time in which to pay the sanction. If he pays it, the case will go forward. If he does not, I will dismiss it with prejudice and he can take his appeal at that time.

Therefore, I request the court of appeals to remand the appeal in this case to this

court so that I may amend the order entered on July 1, 2005.

Entered this 13th day of July, 2005.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge