

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

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KENNETH PAUL SARAUER,

Plaintiff,

v.

ORDER

04-C-273-C

Wisconsin Department of Corrections:  
MATHEW FRANK, JON LITSCHER,  
SM PUCKETT, SHARON ZUNKER, SANDRA  
HAUTAMAKI, JOHN RAY, CINDY O'DONNELL,  
NICOLE BELK and PAULA ARMENTROUT;  
Oakhill Correctional Institution:  
RICHARD VERHAGEN, JAMES PARISI,  
DENNIS CLARK, DEBBIE LANCE,  
JOSEPH MUSACCHIO, JAN MINK,  
LT. SCANLON, JOANN ARNDT, DR. VIJOYA  
DASGUPTA, DR. JAMES THORPE, TODD  
CRONIN and ELAINE WHEELER,

Defendants.  
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In an order dated June 15, 2004, I construed plaintiff's motion to amend his complaint to include a motion pursuant to Fed. R. Civ. P. 4(d)(5) for recovery of costs he incurred in personally serving his complaint on defendant Dennis Clark after Clark failed to sign and return a waiver form. Briefing of the motion was complete on July 23, 2004. From the parties' submissions, it appears that plaintiff attempted initially to serve his complaint

on defendant Clark by mailing the complaint and waiver forms to the Oak Hill Correctional Institution. Shortly thereafter, someone at Oakhill forwarded the mailing to Clark's new employment address, the New Lisbon Correctional Institution. The mailing was returned to plaintiff. Instead of remailing the complaint to Clark at the New Lisbon Correctional Institution address, plaintiff drove 180 miles round trip to the New Lisbon facility. On that day, neither Clark nor the prison staff member authorized to accept service of process on behalf of prison officials was at work. No other person accepted plaintiff's complaint for defendant Clark. Plaintiff then paid \$30 to the Juneau County Sheriff's Department to serve his complaint on Clark.

Plaintiff seeks reimbursement of the \$30 he paid to the Juneau County Sheriff's Department, as well as \$36 to cover his mileage at \$.20 a mile when he drove to the New Lisbon facility. Defendant admits that it was a mistake for prison staff to fail to locate someone else with authority to accept plaintiff's complaint on the day he arrived with it in hand. However, he argues that he should not be responsible for paying plaintiff's travel costs, because plaintiff could have addressed his complaint to the New Lisbon facility as Fed. R. Civ. P. 4 requires, rather than drive 180 miles to deliver it personally. Defendant notes that he has arranged already to reimburse plaintiff the \$30 he paid to the Sheriff's office.

I agree with defendant that he should not be responsible for paying plaintiff's travel costs. Although the return to plaintiff of his misaddressed package may have led him to believe his complaint would not be delivered to Clark if he remailed it to him at the New

Lisbon facility, his concern was not likely well-founded. Fed. R. Civ. P. 4(d)(2)(A) and (B) require that the notice of lawsuit and request for waiver of service form be “addressed directly to the defendant” and mailed by first-class mail. When plaintiff realized that he had misaddressed his complaint to the defendant, he should have prepared new notice forms addressed to defendant at the New Lisbon facility and re-mailed his complaint and the forms to Clark in New Lisbon. It was his choice to drive to New Lisbon in an attempt to serve the defendant personally.

Therefore, IT IS ORDERED that plaintiff’s motion for reimbursement of costs is GRANTED in part and DENIED in part. If defendant has not done so already, he is to reimburse plaintiff for the \$30 plaintiff paid to the Juneau County Sheriff’s Office to serve defendant Clark with his complaint. Plaintiff is not entitled to reimbursement of the costs of his travel to the New Lisbon Correctional Facility.

Entered this 2nd day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge