

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

JAMES R. WHITWELL,

Plaintiff,

v.

BRAD HOYT (Deputy Sheriff);
DOUGLAS COUNTY SHERIFF'S DEPT.;
DOUGLAS COUNTY JAIL AND
COUNTY OF DOUGLAS,

Defendants.

ORDER

04-C-0981-C

This is a civil action for monetary relief in which plaintiff James Whitwell, who is proceeding pro se, alleges that in late 2002, defendant Brad Hoyt stopped him without probable cause and arrested him. He alleges that he was held for a time in the Douglas County jail and subjected to malicious prosecution "through the holiday season of the year 2002." Plaintiff alleges that Hoyt made misrepresentations and lied in an "incident report," withheld a video tape of the incident from prosecutors and lied in his testimony on the stand. After plaintiff endured the financial and emotional costs of defending himself for four months, the charges were dismissed on the prosecution's motion on the ground that the initial stop of plaintiff's vehicle violated the Fourth Amendment. Finally, plaintiff alleges

that he was denied medical attention when it was clear he had been injured. Plaintiff has paid the fee for filing his complaint.

The next step is for plaintiff to serve his complaint on the defendants. However, I note that plaintiff has named as a defendant the Douglas County Jail. As a physical structure, the "jail" cannot be sued. It is incapable of accepting service of plaintiff's complaint or responding to it. Therefore, I will dismiss the Douglas County Jail on the court's own motion.

Also, plaintiff has named the Douglas County Sheriff's Department as a defendant in this lawsuit. Although the sheriff's department is not a suable entity, Majerus v. Milwaukee County, 39 Wis. 2d 311, 314-15, 159 N.W.2d 86 (1968), Wisconsin law specifies that the sheriff of each county is responsible for the care of prisoners and jail conditions within his or her county. Wis. Stat. § 302.37 (1989-90). In the interest of construing plaintiff's complaint liberally, I will assume that he intended to name the Douglas County sheriff as a defendant.

Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the remaining defendants well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint on a county

official, I am enclosing with this memorandum a copy of document titled "Procedure for Serving a Complaint on State or County Officials in a Federal Lawsuit." To guide plaintiff in the procedure for serving a complaint on a municipality, I am enclosing copies of Fed. R. Civ. P. 4 and Wis. Stat. § 801.11(4). (Plaintiff should note particularly Rules 4 (c), (j)(2) and (l).) In addition, I am enclosing to plaintiff extra copies of his complaint and forms he will need to send to the defendants in accordance with the procedures set out in the memoranda. As noted above, proof of service of the complaint on the defendants must be filed with the court after service has been accomplished.

ORDER

IT IS ORDERED that defendant Douglas County Jail is DISMISSED from this lawsuit on the court's own motion.

Further, IT IS ORDERED that plaintiff promptly serve his complaint on the remaining defendants and file proof of service of his complaint as soon as service has been accomplished. If, by February 14, 2004, plaintiff fails to submit proof of service of his complaint on the defendants or explain his inability to do so, I will direct plaintiff to show

cause why his case should not be dismissed for lack of prosecution.

Entered this 4th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge