

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

JONATHON M. MARK,

Plaintiff,

v.

ORDER

05-C-279-C

Off. GUSTAFSON; Sgt. McARTHER; Lt. DOHMS;
Unit Manager DOUGHERTY; Mr. BROWN (head
of PRC); STEPHEN M. PUCKETT,

Defendants.

Plaintiff Jonathon Mark has filed a notice of appeal from the judgment dismissing this case on March 31, 2006. I have reviewed the file and the judgment and believe that this court erred in deciding defendants' motion for summary judgment without addressing plaintiff's contention that he did not have a copy of the court's summary judgment procedures in his possession. Ordinarily, this court sends pro se litigants two copies of the court's summary judgment procedures. The first copy is attached to the magistrate judge's preliminary pretrial conference order. The second copy is sent after a motion for summary judgment has been filed, with a letter specifying the schedule for briefing the motion. The record in this case reveals that no briefing schedule letter was sent to plaintiff after

defendants filed their motion for summary judgment. Instead, the parties had to rely on the generic schedule described in the preliminary pretrial conference order. On January 30, 2006, plaintiff wrote to the court, acknowledging that he had received defendants' motion for summary judgment, but explaining that shortly after he was released from prison, he was returned to custody and incarcerated at the Fond du Lac County jail, where he was having difficulty getting his personal property, including the preliminary pretrial conference order, from the friend with whom he had been living. Although he asked expressly to be provided with another copy of the procedures, it appears that the request was overlooked. In an order dated February 2, 2006, the magistrate judge extended plaintiff's time to oppose defendants' motion to March 13, 2006. In his order, the magistrate judge made no mention of plaintiff's concern about his inability to follow the court's procedures. It does not appear that an additional copy of the procedures was sent to plaintiff at that time.

On March 13, 2006, plaintiff filed four affidavits in opposition to defendants' motion. Only two of the four affidavits addressed issues related to this lawsuit. The other two affidavits were disjointed descriptions of plaintiff's release from prison, his subsequent legal difficulties, his separation from his personal and legal property and his inability to respond completely to defendants' motion for summary judgment. Although plaintiff did not state clearly in these affidavits that he could not follow the court's summary judgment procedures because he did not have them in his possession, it was clear he had not

conformed his submissions in any respect to the procedures. He had not responded to any of defendants' proposed findings of fact, prepared a brief or even proposed facts of his own. On March 31, 2006, I granted defendants' motion for summary judgment, concluding that plaintiff had failed to follow the procedures and therefore had failed to place in dispute any fact defendants had proposed.

While the order of dismissal was being processed by the court, plaintiff was preparing a fifth affidavit, which arrived at the court on April 3, 2006, three days after judgment was entered. This affidavit, titled "Plaintiff's Reply Affidavit to Defendants' Motion for Summary Judgment in Opposition for Summary Judgment," is confusing. For several paragraphs, plaintiff appears to be attempting to authenticate his earlier filed affidavits. For example, he states repeatedly, "I make this affidavit based on my own personal knowledge with regard to the affidavit dated [earlier]. That the same affidavit, also dated the same, provides true and accurate answers/information with regard to defendants' motion for summary judgment. . . ." Buried several pages back at paragraph 16, plaintiff states, "I have never received from this court or otherwise the "Procedure to be Followed on Motions for Summary Judgment." In paragraph 19, he states, "I have provided evidence that I have been hindered in forming a defense and maintaining this action. . . ." The affidavit was filed without comment. I should have noticed plaintiff's comments regarding his failure to receive the court's summary judgment procedures, construed the affidavit as a timely filed motion

to alter or amend the judgment pursuant to Fed. R. Civ. P. 59, and granted the motion so that I could provide plaintiff another chance to oppose the motion after sending him another copy of the court's procedures.

In light of these circumstances, I am requesting that the Court of Appeals for the Seventh Circuit relinquish jurisdiction of the case and return jurisdiction to this court so that I can vacate the judgment of dismissal and insure that plaintiff has a fair chance to oppose defendants' motion for summary judgment according to the court's summary judgment procedures.

Entered this 2d day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge