

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

STEVEN D. STEWART,

Plaintiff,

v.

SGT. MCDANIELS, C.O. BARR, JOANNE GOVIERE,
C.O. MCDANIELS, C.O. STOWELL,
BURTON COX, JR., CINDY SAWINSKI,

Defendants.

ORDER

05-C-293-C

On June 22, 2005, I granted plaintiff's request for leave to proceed in forma pauperis on his First Amendment claim against defendants McDaniels, Goviere and Stowell for their alleged violations of his right to freedom of expression and free exercise under the First Amendment, and on his Eighth Amendment deliberate indifference claims against respondents Cox, Sawinski and Barr. Now it has come to the court's attention that plaintiff listed defendant McDaniels twice in the caption of his complaint, once as a "Sgt. McDaniels" and once as "C.O. McDaniels."

The Attorney General's office has accepted service of plaintiff's complaint on behalf of all of the defendants, including defendant C.O. McDaniels, who defendants identify as

Jeremy McDaniel. The office has not accepted service for the defendant plaintiff identified as Sgt. McDaniels, saying that “[n]o Sgt. McDaniels [is] employed at WSPF.”

Pursuant to Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990), it is the plaintiff’s responsibility to identify the defendants. If a defendant cannot be identified, he or she cannot be served with plaintiff’s complaint. A plaintiff cannot maintain a lawsuit against a defendant who has not received notice of the claim against him and is therefore unable to defend against allegations of wrongdoing. It appears that plaintiff simply made a mistake when he duplicated C.O. McDaniel’s name in the caption of his complaint. Nevertheless, to make it clear that there is only one defendant McDaniel, I am dismissing the complaint as to Sgt. McDaniels. If plaintiff intended to include another defendant McDaniel, he should advise the court promptly and provide enough identification so that the defendant may be served.

ORDER

IT IS ORDERED that defendant “Sgt. McDaniels” is DISMISSED from this action.

Entered this 6th day of July, 2005.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge

