

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

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VINCENT L. AMMONS,

Plaintiff,

v.

DR. BRUCE GERLINGER,  
RENEE ANDERSON,  
BECKY DRESSLER and  
RITA ERICSON,

Defendants.

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ORDER

06-C-20-C

Plaintiff Ammons's motion for reconsideration of this court's order of December 14, 2006, dismissing defendant Debb Lemke from this action for plaintiff's failure to serve her with his complaint will be denied. Plaintiff complains bitterly that this court abused its discretion in refusing to assist him in discovering the whereabouts of Lemke, but that is not the court's job. As a prisoner litigant subject to the three-strikes provision in 28 U.S.C. § 1915(g), plaintiff does not qualify for service of process arranged by this court through the United States Marshal or through the informal service agreement it has reached with the state Attorney General's office. Plaintiff suggests that Lemke is still an employee of the

Wisconsin Department of Corrections and that the remaining defendants should know her whereabouts. He claims that on April 9, 2006 and again on April 16, 2006, he asked defendant Dressler for defendant Lemke's work address, that he sought the same information from Steve Casperson, the Administrator of the Division of Adult Institutions for the Department of Corrections in a letter dated on April 16, 2006 and that he also corresponded with Sharon Zunker, a nursing coordinator with the Bureau of Health Services on May 9, 2006, in an attempt to learn Lemke's work address. He says that none of these individuals responded to his requests. He does not say that at any time after he was allowed to proceed against defendants Gerlinger, Anderson, Dressler and Ericson in August of 2006, he conducted formal discovery from defendants in an effort to learn whether Lemke remained employed with the Department of Corrections and, if so, where she is assigned. Moreover, although plaintiff paid the fee for filing his complaint, he appears to have chosen not to pay a process server to contact the Department of Corrections in an effort to learn her current location. In short, through no one's fault but his own, plaintiff appears to be no closer to locating Lemke now than he was a year ago.

It is not an abuse of the court's discretion to implement the authorization in Fed. R. Civ. P. 4(m) to dismiss a defendant from a case who has not been served within the time limits allowed under the rule. In this case, even with an extension of the 120-day deadline, plaintiff was unable to accomplish service on defendant Lemke. Even now, he is not

prevented from using discovery in this case or hiring a private process server to learn whether Lemke remains an employee of the Department of Corrections and, if so, where she is presently working. If plaintiff does succeed in discovering Lemke's whereabouts, he is free to sue her in a separate lawsuit. In sum, plaintiff has failed to persuade this court that it was an abuse of its discretion to exercise its authority to control its docket and move this case toward resolution by dismissing a defendant who was not served with plaintiff's complaint in the time allowed under Fed. R. Civ. P. 4.

#### ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the order entered in this case on December 14, 2006 is DENIED.

Entered this 29th day of January, 2007.

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