

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

KENNETH VALENTINE AWE,

Plaintiff,

ORDER

v.

06-C-162-C

KEITH GOVIER, Grant County Sheriff,

Defendant.

In this civil action for monetary and injunctive relief, plaintiff Kenneth Awe contends that defendant Keith Govier violated his right to equal protection by promulgating and enforcing jail policies that arbitrarily permit some inmates to own a television while denying others the same privilege. On June 14, 2006, defendant answered plaintiff's complaint and filed a counterclaim against plaintiff, contending that he owes the jail \$828.52 for medical care he received while incarcerated. (According to defendant's answer, plaintiff is no longer confined at the Grant County jail.)

Under Fed. R. Civ. P. 13(a), a counterclaim is compulsory only when the claim "arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim." Because defendant's claim for medical expense reimbursement is not connected in

any way to plaintiff's claim that he was denied equal access to a television set, defendant's counterclaim falls under Fed. R. Civ. P. 13(b), which governs permissive counterclaims. Permissive counterclaims fall outside the court's supplemental jurisdiction and require an independent basis of federal jurisdiction. Oak Park Trust and Savings Bank v. Therkildsen, 209 F.3d 648, 651 (7th Cir. 2000); By-Prod Corp. v. Armen-Berry Co., 668 F.2d 956, 961 (7th Cir. 1982); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 6 Federal Practice and Procedure, § 1422 (2d ed. 1990). Defendant does not contend that he and plaintiff have diverse citizenship and the amount in controversy is much less than the \$75,000 required to establish diversity jurisdiction under 28 U.S.C. § 1332. Furthermore, defendant's counterclaim arises under state law and therefore federal question jurisdiction does not exist under 28 U.S.C. § 1331.

This court has an independent obligation to insure that subject matter jurisdiction exists. Arbaugh v. Y & H Corp., 126 S. Ct. 1235, 1237 (2006). The Court of Appeals for the Seventh Circuit has reiterated the need for litigants to meticulously review the limits of federal jurisdiction to prevent the waste of federal judicial resources. Belleville Catering Co. v. Champaign Market Place, L.L.C., 350 F.3d 691, 693 (7th Cir. 2003). The federal courts are "always obliged to inquire sua sponte whenever a doubt arises as to the existence of federal jurisdiction." Tylka v. Gerber Prods. Co., 211 F.3d 445, 447-48 (7th Cir. 2000). In this case further inquiry is unnecessary because it is apparent that this court lacks subject

matter jurisdiction over defendant's counterclaim. Consequently, defendant's counterclaim will be dismissed without prejudice to his refileing it in state court.

ORDER

IT IS ORDERED that defendant Grant County Sheriff's counterclaim for medical expenses owed by petitioner is DISMISSED without prejudice for lack of subject matter jurisdiction.

Entered this 19th day of June, 2006.

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