

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

JAMERREL V. EVERETT,

Plaintiff,

v.

STEVE WATTERS, WENDY
NORDBERG and STEVE
SCHNEIDER,

Defendants.

ORDER

06-C-497-C

Plaintiff Jamerrel Everett is detained civilly by the state of Wisconsin pursuant to Wis. Stat. Ch. 980, Wisconsin's Sexually Violent Persons Law. In this civil action under 42 U.S.C. § 1983, plaintiff is proceeding on a claim that defendants Steve Watters, Wendy Nordberg and Steve Schneider violated his right to free speech by prohibiting him from possessing pornography and books about psychology.

Now before the court is defendants' motion for summary judgment, which plaintiff has not opposed. Because plaintiff did not oppose the motion, defendants have moved also to dismiss the case for plaintiff's failure to prosecute it. Unfortunately, it appears from the court's record that plaintiff has had no notice of defendants' pending motions. Therefore,

the motion to dismiss will be denied and a decision on the motion for summary judgment will be stayed.

Defendants filed their motion for summary judgment on April 6, 2007. According to the briefing schedule established in the court's preliminary pretrial conference order, dkt. #7, at 7, plaintiff had 30 days to respond to defendants' motion. When May 6 came and went without any response from plaintiff, defendants moved to dismiss the case for plaintiff's failure to prosecute it. Fair enough.

However, in reviewing defendants' proposed findings of fact in support of their motion for summary judgment, several facts stood out as troubling. Proposed Fact #2 states, "Mr. Everett was admitted to Sand Ridge Secure Treatment Center on October 28, 2004, where he resided until February 8, 2007." Proposed Fact #4 states, "On February 8, 2007, Mr. Everett transferred to the Wisconsin Resource Center." A phone call placed to the state inmate locator service confirms that plaintiff is currently detained at the Wisconsin Resource Center.

Defendants did not attach a certificate of service to their motion for summary judgment and supporting materials, making it impossible to tell the address to which those materials were mailed or even if they were mailed at all. The certificate of service attached to defendants' recently-filed motion to dismiss shows that a copy of that motion was mailed to the Sand Ridge Correctional Institution, where plaintiff no longer resides. Although

plaintiff is obligated ordinarily to inform the court of address changes as soon as they occur, in this case defendants knew that plaintiff had been moved to another institution but nevertheless appear to have sent their motion to plaintiff's former institution. Under these circumstances, it would be unjust to dismiss plaintiff's case for failure to prosecute or even to rule on defendants' pending motion for summary judgment.

The court has updated its records to reflect plaintiff's new mailing address. Defendants may have until May 21, 2007 in which to submit to this court certification that they have served plaintiff with a copy of their summary judgment motion and supporting materials. If their certification shows that they sent the materials to his current address at the same time they filed those materials with the court, the motion for summary judgment will be taken under advisement. However, if the certification shows that plaintiff is being served with the motion for summary judgment only now, plaintiff may have until June 21, 2007, to file his response and defendants may have until July 1, 2007, in which to file their reply. Plaintiff is reminded that his response to defendants' motion for summary judgment must conform to this court's Procedure to Be Followed on Motions for Summary Judgment, an extra copy of which is enclosed with this order.

ORDER

IT IS ORDERED that

1. A decision on defendants' motion for summary judgment is STAYED.
2. Defendants' motion to dismiss for failure to prosecute is DENIED.
3. Defendants may have until May 21, 2007 in which to submit proof of service on plaintiff of their motion for summary judgment and supporting materials. If the proof of service shows that a copy of the motion for summary judgment was not served on plaintiff in April 2007 at the Wisconsin Resource Center, plaintiff may have until June 21, 2007, in which to serve and file his response to the motion. Defendants may have until July 1, 2007, in which to serve and file a reply.

Entered this 17th day of May, 2007.

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