

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

In this civil action plaintiff Jamerrel Everett, a patient detained at the Wisconsin Resource Center pursuant to Wis. Stat. Ch. 980, contends 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 while he was detained at the Sand Ridge Secure Treatment Center. Two months after plaintiff moved from Sand Ridge to the Wisconsin Resource Center, defendants filed a motion for summary judgment. Unfortunately, it was not until plaintiff failed to respond to the motion within the deadline set by the court that it was discovered that a copy of defendants' motion might not have reached plaintiff. In particular, it appeared from the court's record that defendants were still

mailing documents to plaintiff at Sand Ridge rather than the Wisconsin Resource Center. Subsequently, defendants' counsel confirmed that defendants' motion had been mailed to plaintiff at his old address, that Sand Ridge might not have forwarded the motion to plaintiff and that defendants were mailing another copy of the motion and supporting papers to plaintiff at the Wisconsin Resource Center. In an order dated May 17, 2007, I extended plaintiff's time for responding to defendants' motion until June 21, 2007, and defendants' response deadline to July 1, 2007.

Now plaintiff has filed a letter with the court dated May 28, 2007, which I construe as a motion for his transfer to the Sand Ridge Secure Treatment Center. Because it does not appear that plaintiff mailed a copy of his motion to opposing counsel as he is required to do, I am enclosing a copy to defendants with a copy of this order. Plaintiff is reminded that it is his obligation under Fed. R. Civ. P. 5 to serve a copy of every letter, brief, motion or other document he files with the court on counsel for the defendants and to indicate clearly on the court's copy that he has done so. In the future, the court will disregard any filing plaintiff submits that does not show that he has complied with Rule 5's service requirements.

In his motion, plaintiff says that because he is no longer at Sand Ridge, he cannot respond to defendants' motion. For this reason, he suggests that the court order his return to Sand Ridge until this lawsuit is resolved. However, this court cannot order plaintiff's return to the Sand Ridge Secure Treatment Facility. There is simply no legal basis on which

to do so. State officials do not violate the constitution when they move institutionalized persons from one facility to another. More important, plaintiff has made no showing that his detention at the Wisconsin Resource Center is preventing him physically from litigating this action. Indeed, plaintiff does not offer one reason why he cannot respond to defendants' motion for summary judgment from his current place of detention.

Plaintiff does not say that institution officials are denying him access to defendants' motion and supporting materials or his own file of this case, and it is unlikely such a circumstance exists. Assuming he has access to his own file of this case, plaintiff fails to explain why he cannot respond to defendants' proposed facts attempting to show that he has never requested and been denied the type of print material he alleges he was denied at Sand Ridge or that, in any event, the decisions to deny "adult entertainment materials" and certain types of psychology and psychiatry reading materials to patients detained under Wisconsin's Sexually Violent Persons Law are based upon the reasonably related therapeutic interests of the patients and security interests of the institution. If any evidence sufficient to put defendants' proposed facts into dispute exists, plaintiff should have been able to obtain it through discovery. The discovery mechanisms explained to plaintiff at the preliminary pretrial conference order and recorded in the Federal Rules of Civil Procedure are available to all litigants, whether they are confined at Sand Ridge or the Wisconsin Resource Center.

I suspect that plaintiff's motion is intended simply to delay the resolution of his claim because he has not prosecuted his case diligently. Indeed, until he filed the present motion, plaintiff has not communicated with this court about his case since January 10, 2007, when the magistrate judge conducted a preliminary pretrial conference. His failure to perform even the simple task of advising the court and defendants of his move from Sand Ridge to the Wisconsin Resource Center indicates a lack of interest in pursuing his claims. Plaintiff's decision to allow his case to languish unattended until now does not warrant further delay in bringing this case to resolution. Plaintiff's response to defendants' motion for summary judgment remains due on June 21, 2007.

ORDER

IT IS ORDERED that plaintiff's motion for transfer to the Sand Ridge Secure Treatment Center is DENIED.

Entered this 4th day of June, 2007.

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