

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

RICHARD SCHNEITER, GARY BOUGHTON,
PETER HUIBREGTSE, RICK RAEMISCH,
SANDRA HAUTAMAKI, ELLEN RAY, GERALD
BERGE, CAPTAIN MONICA HORNER, THOMAS
CRAVENS and SGT. STEVEN WRIGHT,

Defendants.

ORDER

06-C-608-C

The deadline for filing dispositive motions in this case was September 21, 2007. Defendants filed a motion for summary judgment on that date addressing all three of the claims remaining in this lawsuit. Now, in an envelope postmarked September 26, 2007, plaintiff Nathaniel Lindell has filed a motion for partial summary judgment, addressing two of the three claims. The motion, brief and proposed findings of fact are dated September 19, 2007. In light of the one-week gap in time between the date plaintiff signed and dated his documents and the date postmarked on the envelope bearing plaintiff's submissions, it will be necessary to obtain additional information from plaintiff in order to determine whether

his motion is timely.

In Houston v. Lack, 487 U.S. 266 (1988), the United States Supreme Court held that a pro se prisoner's submission to the court is considered to be filed with the court when it is delivered with proper postage to prison authorities for mailing to the court. Therefore, if plaintiff delivered his motion for partial summary judgment to prison authorities for mailing, complete with proper postage, before the end of the day on September 21, 2007, his motion is timely. However, before I can determine whether the motion was timely filed, plaintiff will have to submit to this court no later than October 10, 2007, an affidavit in which he advises the court of the date on which he delivered his motion and accompanying documents to prison authorities for mailing, together with a copy of his request for disbursement of postage from his account. If, by October 10, 2007, plaintiff does not submit such documentation of the timing of his filing of his motion, I will assume that he did not file his motion before September 21, 2007, and the motion will be denied as untimely filed.

ORDER

IT IS ORDERED that plaintiff may have until October 10, 2007, in which to file an affidavit setting forth the date on which he delivered his motion and accompanying papers to prison authorities for mailing, together with a copy of his request for disbursement of

postage from his account. If, by October 10, 2007, plaintiff does not show that he “filed” his motion before the end of the day on September 21, 2007, his motion will be denied as untimely. If plaintiff makes the required showing, however, the clerk will set a schedule for briefing the motion.

Entered this 1st day of October, 2007.

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