

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.

MEMORANDUM

06-C-608-C

In an order dated October 1, 2007, I asked plaintiff Nathaniel Lindell to submit proof that he “filed” his motion for partial summary judgment by the September 21, 2007 deadline established in this case for filing dispositive motions. I noted that although plaintiff’s motion was dated September 19, 2007, his motion and supporting documents were not received by the court until September 27, 2007. Moreover, the envelope bearing the motion was not postmarked until September 26, 2007. Nevertheless, I advised plaintiff that if he could show that on or before September 21, 2007, he had asked for a postage disbursement and delivered his motion and accompanying papers to prison authorities for

mailing, his filing would be considered timely under Houston v. Lack, 487 U.S. 266 (1988). Now plaintiff has responded to the October 1 order with an affidavit and a copy of a “disbursement request” form he has marked as “Exhibit A.”

In his affidavit, plaintiff avers that “on 7-19-07,” he placed outside his cell door for mailing his motion for summary judgment, brief, and supporting papers, together with a postage disbursement request. Exhibit A is a copy of a form for filing a disbursement request. It is dated “7-19-07” and is signed by plaintiff. In a box marked “Individual Items Requested” plaintiff has written, “postage to mail attached letter.” In the same box, someone has written “1 lb. 8.3 oz.” In a box titled “Reason for Request,” plaintiff writes, “Case 06-C-608-C, I need to file a motion. You know this case is active. Clerk of Court, P.O. Box 437, Madison, WI, 53701.” The lower portion of the disbursement form is signed and approved by an individual whose name is not legible. The date of approval is written as “9-24-07.”

There are a number of reasons that plaintiff’s affidavit and supporting exhibit raise more questions than answers about the timing of plaintiff’s filing. Why has plaintiff twice referred to the date of his request for disbursement as a July date instead of a September date, once on the disbursement form and again in his affidavit to this court? Why did plaintiff identify his motion for summary judgment and supporting papers as a “letter” on the form? Was plaintiff’s “letter” his motion for summary judgment and supporting papers

(which the court has determined weighs 1 lb. 1.6 ozs.) or something else that weighed “1 lb. 8.3 oz.” as the form says? Were plaintiff’s July references correct and the disbursing officer’s September 24 date incorrect?

As confusing as plaintiff’s “proof” of mailing is, I am willing to accept it as showing that he requested postage for mailing his motion for summary judgment before the dispositive motions deadline expired. I believe the postage disbursement approval date of September 24, 2007 is a more reliable indicator of the timing of plaintiff’s request than the “7-19-07” date plaintiff wrote in the box next to his signature and in his affidavit. This is because the September 24 date coincides closely with the September 26 postmark on the envelope bearing plaintiff’s motion. Moreover, the court’s docket shows that the only papers plaintiff submitted in this case in July were dated July 21, 2007 and weighed only 2.6 ozs. Finally, the fact that plaintiff avers in his affidavit that he made the disbursement request on “7-19-07,” appears to confirm that he may frequently write a “7” for a “9” when he means to write a numerical September date. It seems highly unlikely that plaintiff would ask for disbursement of postage in mid-July for a motion he would not have completed and signed until September 19, 2007.

Accordingly, I will accept plaintiff’s motion for partial summary judgment as having been timely filed. Briefing on the motion shall proceed as follows:

Defendants may have until November 1, 2007, in which to oppose the motion.

Plaintiff may have until November 15, 2007, in which to serve and file a reply.

Entered this 11th day of October, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge