

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

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MARK D. MARSHALL,

Plaintiff,

v.

JANEL NICKEL; SEAN SALTER;
GREG GRAMS, Warden at CCI;
C/O JAMES; C/O T. BITTELMAN;
C/O NEUMAIER, Medical Doctor SULIENE;
ICE MARY LEISER; ICE BURT TAMMINGA;
RN. NANCY HAHNISCH; LT. LIPINSKI;
RN. SUE WARD; RN. LINDY MUCHOW;
2nd Shift SGT. FINK; RN. KIM CAMBELL;
MIKE VANDENBROOK; JANET WALSH; and
Psychiatrist DANA DIEDRICH,

Defendants.

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ORDER

06-C-617-C

On March 12, 2007, I allowed plaintiff Mark D. Marshall to supplement his complaint with additional allegations and granted him leave to proceed against defendant Dana Diedrich on his claim that Diedrich refused to treat his mental health conditions in violation of the Eighth Amendment. Defendant Diedrich answered plaintiff's complaint on April 19, 2007. Now plaintiff has filed a document titled "Plaintiff Motion for Judgment

of Default,” which I construe as a motion for entry of default pursuant to Fed. R. Civ. P. 55. In addition, plaintiff has moved the court for issuance of writs of habeas corpus ad testificandum to bring two incarcerated witnesses to trial. I will address each motion in turn.

In support of his motion for entry of default against defendant Diedrich, plaintiff argues that Diedrich failed to respond to his complaint within the twenty day time limit required under the Federal Rules of Civil Procedure and, therefore, he is entitled to entry of judgment in his favor. However, entry of default is appropriate where a defendant has failed to plead or otherwise defend an action. Fed. R. Civ. P. 55(a). That is not a circumstance present here. Under an agreement entered into between the Wisconsin Department of Justice and the court allowing for informal service of process on Department of Corrections employees in cases filed by pro se prisoners, defendants have 40 days from the date the court mails copies of the pleadings to the Department of Justice in which to file a responsive pleading. In this case, plaintiff’s complaint was mailed to the Department of Justice on March 13, 2007. Therefore, defendant Diedrich had until April 23, 2007, in which to serve an answer. She met that deadline. Even if her answer had been late, however, it is clear that defendant is defending this action. Therefore, plaintiff has failed to show that he is entitled to entry of default.

Plaintiff’s motion for writs of habeas corpus ad testificandum also will be denied, because the motion is premature. In a preliminary pretrial conference order dated April 12,

2007, Magistrate Judge Stephen Crocker set a deadline of September 14, 2007, within which the parties may file dispositive motions. It is possible the case will be decided on its merits in connection with such a motion. Even if it is not, trial is not scheduled until February 11, 2008. Therefore, it is too early for the court to issue writs of habeas corpus ad testificandum for plaintiff's witnesses.

ORDER

IT IS ORDERED that plaintiff's motion for entry of default pursuant to Fed. R. Civ. P. 55(a), is DENIED.

Further, IT IS ORDERED that plaintiff's motion for issuance of writs of habeas corpus ad testificandum for trial witnesses is DENIED without prejudice to his renewing his motion sometime in early January 2008, should it appear his case will go to trial.

Entered this 2d day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge