

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

PATRICK J. FITZGERALD,

Plaintiff,

v.

ORDER
07-C-61-C

JAMES GREER, Health Services Administration WDOC;
HELEN NELSON, Health Services Administrator WDOC;
TIMOTHY CORRELL, MD, Dodge Correctional Institution;
DEB LEMKE, MD, Oshkosh Correctional Institution;
ROMAN Y KAPLAN, Health Services Unit, WDOC/OSCI;
NANCY BOWENS, Nurse Practitioner WDOC/OSCI; and
JENNIFER DELVAUX, Inmate Complaint Examiner, WDOC/OSCI,

Defendants.

Recently, in an order dated May 14, 2007, I dismissed defendant Steve Casperson from this lawsuit because he could not be located to be served with plaintiff's complaint. Now the court has received another unexecuted "Process Receipt and Return" form from the United States Marshal, showing that defendant Deb Lemke, a medical doctor, could not be located. According to the notations on the return, a deputy marshal contacted the Health Services Unit at the Oshkosh Correctional Institution on April 24, 2007, and learned that Lemke is no longer a Department of Corrections employee. On April 27, 2007, the deputy

marshal went to an alternative address, an urgent care center, and learned that the “address [is] no good.” Finally, the deputy marshal attempted to serve Lemke at 310 Westbrook in Oshkosh, Wisconsin and learned that the “wrong” Deb Lemke lives at that address. (From another lawsuit filed in this court by a prisoner attempting to locate a defendant Deb Lemke, M.D., I am aware that there is a Debb Lemke in Wisconsin who was not and never has been a doctor. See Ammons v. Lemke, Case No. 06-C-20-C (slip. op. Dec. 14, 2006).

Ordinarily, under circumstances such as this, I would dismiss a defendant who cannot be found upon a finding that the United States Marshal made reasonable efforts to locate her. See Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal to make reasonable effort to obtain current address). However, in this instance, the Wisconsin Department of Justice has already notified the court that it has accepted service of plaintiff’s complaint on behalf of defendant Lemke. Dkt. #15. Indeed, Lemke has since answered plaintiff’s complaint. Dkt. #23. Therefore, the “process receipt and return” form reflecting the marshal’s inability to serve defendant Lemke will be placed

in the file, but no action will be taken with respect to it. Lemke remains a party to this lawsuit.

Entered this 23d day of May, 2007.

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