

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

EDWIN GONZALES,

Plaintiff,

v.

DR. BOB BEVARD,
NURSE STEVE HELGERSON and
SUE WARD,

Defendants.

ORDER

07-C-144-C

Sue Ward has been dismissed from this case twice. Initially, she was dismissed because she could not be located to be served with plaintiff's complaint. However, in an order dated May 29, 2007, I reinstated her after discovering that she was a defendant in another lawsuit in this court and that she had filed a document in that suit which revealed her address. I told plaintiff that although the address could not be disclosed to him because of his prisoner status, plaintiff could prepare a service packet for Ward containing a copy of his complaint and this court's screening order allowing him to proceed on his claims, and all the items required under Fed. R. Civ. P. 4(d)(2) to be included in a request for waiver of service of a summons packet. (A copy of the procedure for seeking waiver of service of

summons from a defendant in a federal lawsuit was enclosed to plaintiff with a copy of the order, together with the forms he needed to complete.) I told plaintiff to place all of the documents in a large envelope with postage affixed for mailing to defendant Ward and then mail the packet in an even larger envelope to the court no later than June 16, 2007. I advised plaintiff that if he followed those instructions, the court would forward the packet to Ward and that, as soon as he received a signed waiver form from Ward, he was to make a copy of it and mail the copy to the court so that the record would contain proof of service of his complaint on her. When plaintiff did not submit the required service packet to the court by June 16, I entered an order on July 5, 2007, dismissing Ward for plaintiff's failure to prosecute.

Now plaintiff has filed a letter dated July 29, 2007, in which he apologizes for failing to send the documents required to be served on Ward by June 16, and asks that I reinstate her as a party yet again. Plaintiff contends that on June 12, 2007, he "put several documents in the mail" thinking that "one of those documents was the document containing [sic] to Sue Ward." He says that when he received this court's order of July 5 dismissing her, he asked the institution for a copy of the "transaction sheet" to learn whether the documents had been mailed out and discovered they had not been sent. Plaintiff does not believe that anyone at the institution is "playing" with his mail. He has located "the original copy of that document" and asks for permission to resubmit it to the court "if possible."

It is perplexing why plaintiff waited three weeks after receiving this court's July 5 order before writing to explain his failure to submit the required service packet by the June 16 deadline. It is even more curious why plaintiff has not included the completed packet with his tardy request to try again. Although I am inclined for these reasons alone to deny plaintiff's request, it is the case that the Rules of Civil Procedure allow a plaintiff 120 days to serve his complaint and, in this case, the 120-day deadline will not expire until August 15, 2007. (In an earlier order, I noted that plaintiff's 120-day deadline expired on July 19, 2007, but that date was miscalculated because it was counted from the date plaintiff's complaint was filed with this court rather than the date of the screening order allowing plaintiff to proceed.) Therefore, I will give plaintiff one more chance to comply with this court's May 29, 2007 order. However, I will not grant plaintiff's motion to reinstate Ward at this time. Instead, I will do so only if plaintiff submits, no later than August 14, 2007, the completed service packet for her as described in the May 29 order. If the packet is received by the August 14 deadline, I will have time to mail the packet to Ward before the 120-day deadline expires on August 15, 2007. If, however, plaintiff fails to meet the August 14, deadline, I will deny his motion to reinstate Ward so as to prevent potential prejudice to the other defendants that additional delays in moving this case forward are likely to cause. In that instance, plaintiff will remain free to file a separate lawsuit against Ward if and when he is prepared to prosecute her diligently.

ORDER

IT IS ORDERED that no later than August 14, 2007, plaintiff is to submit to this court a large envelope, with postage affixed for mailing to defendant Ward, containing a copy of his complaint, this court's April 17, 2007 screening order, and all the items required under Fed. R. Civ. P. 4(d)(2) to be included in a request for waiver of service of a summons packet. (Another copy of the procedure for seeking waiver of service of a summons from a defendant in a federal lawsuit is enclosed to plaintiff with a copy of this order, together with additional copies of the forms he needs to complete.)

Further, IT IS ORDERED that if, by August 14, 2007, plaintiff fails to submit the required service packet, his renewed motion to reinstate Sue Ward will be denied.

Entered this 2d day of August, 2007.

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