

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

TAYR KILAAB AL GHASHIYAH (KHAN),
f/n/a JOHN CASTEEL,

Plaintiff,

v.

ORDER

07-C-308-C

MATTHEW FRANK, RICHARD SCHNEITER,
CHRISTINE BEERKIRCHER, JAILOR A. JONES,
GERALD KONDOZ, JAILOR SHARPE,
JAILOR TAYLOR, JAILOR HANFIELD, JAILOR PRIMMER,
JAILOR MICKELSON, JAILOR ESSER,
JAILOR SCULLION, JAILOR BEARCE,
JOHN McDONALD, JOHN POLINSKE,

Defendants.

The United States Marshal has filed a “Process Receipt and Return” form showing that he has been unable to locate defendant John Polinske to serve him with plaintiff’s complaint. According to the notations on the form, there is an Aaron J. Polinske working at the Jackson Correctional Institution in River Falls, Wisconsin, but this individual does not go by the name of John and does not fit the description of the John Polinske who is alleged to have worked previously for the Department of Corrections. In addition, the Marshal

indicates that there is no record of any other individual named Polinske who has previously or is now working for the Department of Corrections.

I conclude that the United States Marshal has made a reasonable effort to locate the individual that plaintiff identified as John Polinske and has been unsuccessful. 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).

A plaintiff cannot maintain a lawsuit against a defendant who has not received notice of the claim against him and is therefore unable to defend against allegations of wrongdoing. Instead, the action must be dismissed as to defendant Polinske, without prejudice to plaintiff's filing a new action against him at some future time if he is able to locate Polinske to serve him with his complaint.

ORDER

IT IS ORDERED that defendant John Polinske is DISMISSED from this action, without prejudice to plaintiff's filing a lawsuit against him sometime in the future.

Entered this 19th day of September, 2007.

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