

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

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SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

KENNETH KELLER; ANGIE WOOD; LT. KUSTER;
LT. KIRBY LINJER; CO. II CAROL COOK;
PETER ERICKSON; CAPT. BRANT;
WILLIAM POLLARD; DR. STEVEN SCHMIDT;
LT. LAMBRECHT; CAPT. BRUCE MURASKI;
PHIL KINGSTON; DON STRAHOTA;
CAPT. O'DONOVAN; SGT. VOSS;
SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA;

Defendants.

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ORDER

07-C-318-C

Plaintiff Shaheed Taalib'Din Madyun has filed a motion titled "Second Motion for Appointment of Counsel based on Madyun's Inability to Communicate with Witnesses due to Misconduct of Defendants by Blocking all Out-going and In-coming Mail that Relates to this Civil Rights Suit," which I construe as a motion for reconsideration of this court's July 31, 2007 order denying plaintiff's first motion for appointment of counsel. In his motion, plaintiff alleges that prison officials are denying him access to legal loans he wants

so that he can communicate with his witnesses to “notify [them] of the status of [his] civil case” and obtain “several affidavits.” In addition, plaintiff alleges that he has attempted to comply with this court’s directive that he serve defendant Lehman with a copy of his complaint and seek to obtain a waiver of personal service of a summons from him, but a D. Bushweiler refused on September 4, 2007 to give him a legal loan to cover the cost of sending the packet by “certified mail,” and refused again on September 5 to allow him postage to send the packet by regular mail. Plaintiff states that in an effort to learn whether “defendants” were deliberately denying him legal loan postage simply to block his attempts to litigate this action, he deliberately wrote an “ordinary” letter to a Betty Madyun that “was not legal” and asked for legal loan postage to cover the communication. “The envelope went out without questioning why it was not legal.”

Plaintiff alleges as well that “other legal materials” he requested from Torence Jackson “relating to this civil case” were returned to Jackson and that someone at the prison engaged in a foiled attempt to plant contraband in plaintiff’s cell. Apparently, plaintiff believes these acts are intended to retaliate against him for his having filed this lawsuit.

Neither of plaintiff’s assertions that he is being denied legal loan privileges or that he is being targeted for retaliation warrants reconsideration of the decision to deny his motion for appointment of counsel. Whether plaintiff is represented by counsel or represents himself, he is obligated to pay the costs related to this litigation. Moreover, it is impossible

to see how having appointed counsel would put an end to acts plaintiff perceives to be retaliatory. If it is true that defendants or other prison officials are engaging in retaliatory acts against plaintiff for his having filed this lawsuit, plaintiff's recourse is to file another lawsuit raising that claim. How far prison officials must go in helping prisoners litigate civil rights lawsuits in order to avoid infringing an inmate's right of access to the courts is not a matter that plaintiff raised in his complaint in this case. If he believes that defendants' actions are denying him meaningful access to the courts, he will have to raise that claim in a lawsuit separate from this one. In this latter regard, however, I am willing to address one matter in the context of this lawsuit.

I have advised plaintiff that it is his responsibility to serve defendant Lehman with a copy of his complaint and a service packet seeking waiver of service of a summons as permitted under Fed. R. Civ. P. 4(d). Plaintiff has submitted documentation showing that on September 4, 2007 and September 5, 2007, he completed disbursement requests for legal loan postage that were rejected.

Relevant portions of the September 4 form reveal that in the space allotted to designate the nature of the disbursement, plaintiff wrote, "Return Slip Certified Mail." In the section allowing a description of the "Reason for Request," plaintiff wrote, "Enclosed rules require "Waiver of Service of Summons" be mailed certified. (See the rules in envelope). Ron Lehman is one of defendants in *Madyun v. Smith*, Case No. 07-C-318-C."

In the section marked “Reason for Disapproval,” D. Bushweiler wrote, “Does not qualify to go certified mail.” On the September 5 form in the space designated for the nature of the disbursement, plaintiff wrote, “Postage.” In the section allowing a description of the reason for the request, plaintiff wrote, “instructions and court order demonstrates this mailing of the “waiver of service of summons” is court ordered in 07-C-318-C.” In the space marked “Reason for Disapproval,” Bushweiler wrote, “No.”

D. Bushweiler may have understood plaintiff’s September 5 disbursement request for “postage” as simply a repeat of the disbursement request plaintiff made for certified mail postage on September 4. Plaintiff does not explain anywhere on the September 5 form that he was no longer asking for certified mail postage. His remarks do not tell the prison authorities anything more than that the mailing is “court ordered.” Under these circumstances, it would be difficult for plaintiff to argue in a separate lawsuit that he was denied meaningful access to the court by Bushweiler’s refusal to approve his September 4 and September 5 disbursement requests.

Fed. R. Civ. P. 4(d)(2)(B) provides that a packet to a defendant seeking waiver of service of a summons be “dispatched through first-class mail or other reliable means.” There is no requirement that the packet be sent by certified mail. However, even if plaintiff were to submit an explicit request for legal loan postage to mail a service packet to Lehman by first-class mail and have that request denied, I will not consider in this action whether such

a denial is sufficient to deprive plaintiff of his constitutional right to meaningful access to the courts.

ORDER

IT IS ORDERED that plaintiff Shaheed Taalib'Din Madyun's motion for reconsideration of this court's July 31, 2007 order denying plaintiff's first motion for appointment of counsel is DENIED.

Entered this 21st day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge