

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

- - - - -

RONALD STEWART,

Plaintiff,

v.

KAREN E. TIMBERLAKE, Secretary,  
State of Wisconsin;  
JOHN EASTERDAY, Administrator,  
State of Wisconsin;  
STEVE WATTERS, Former Director,  
Sand Ridge Secure Treatment Center;  
and DEB MCCULLOCH, Director,  
Sand Ridge Secure Treatment Center;

Defendants.

- - - - -

ORDER

10-cv-409-bbc

Plaintiff Ronald Stewart is a patient at Sand Ridge Secure Treatment Center in Mauston, Wisconsin. He has filed a proposed complaint in which he alleges that defendants have enacted a policy that prohibits him and other patients at the prison from owning video games and video game systems, in violation of the First Amendment and Wis. Stat. § 51.61. Because plaintiff is proceeding in forma pauperis, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915.

Plaintiff's complaint includes the same claims as a previous case he filed, Stewart v. Timberlake, 09-cv-687-bbc (W.D. Wis.). After screening the complaint he filed in that case, I concluded that he stated a claim upon which relief may be granted under the First Amendment and Wis. Stat. § 51.61. Case no. 09-cv-687-bbc, dkt. #7. Shortly after I allowed plaintiff to proceed in case no. 09-cv-687-bbc, I granted his unopposed motion to voluntarily dismiss the case without prejudice on the ground that he did not have the funds to prosecute his case. Id. at dkt. #26. I adhere to the conclusion in case no. 09-cv-687-bbc and will allow plaintiff to proceed on his federal and state law claims. However, plaintiff should know that if he chooses to voluntarily dismiss his case again, this time the dismissal may be with prejudice. Fed. R. Civ. P. 41(a)(1)(B) ( "[I]f the plaintiff previously dismissed any federal—or state—court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.")

Under an informal agreement with this court, the Attorney General's office will accept service on behalf of state employees. In case no. 09-cv-687-bbc, the Attorney General's office did not accept service on behalf of defendant Steve Watters on the ground that he had retired. Accordingly, I will forward the complaint to the Attorney General to accept service on behalf of defendants Timberlake, Easterday and McCulloch. With respect to defendant Watters, the clerk of court has prepared Marshals Service and summons forms and is forwarding copies of the complaint, this order and the completed forms to the United States

Marshal for service on him.

In completing the Marshals Service forms for defendant Watters, the clerk has not provided a forwarding address because this information is unknown. It will be up to the marshal to make a reasonable effort to locate defendant Watters by contacting his former employer (in this case, the Department of Health Services) or conducting an internet search of public records for the defendant's current address or both. 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). Reasonable efforts do not require the marshal to be a private investigator for civil litigants or to use software available only to law enforcement officers to discover addresses for defendants whose whereabouts are not discoverable through public records.

Also, for plaintiff's information, in Sellers, the court of appeals recognized the security concerns that arise when prisoners have access to the personal addresses of former or current prison employees. Id. at 602. For this reason prison employees often take steps to insure that their personal addresses are not available in public records accessible through the internet. If the marshal is successful in obtaining the defendant's personal address, he is to maintain that address in confidence rather than reveal it on the Marshals Service forms, because the forms are filed in the court's public file and mailed to the plaintiff after service is effected.

## ORDER

IT IS ORDERED that

1. Plaintiff Ronald Stewart is GRANTED leave to proceed on his claims that defendants Karen Timberlake, John Easterday, Steve Watters and Deb McCulloch prohibited him from owning video games and video game systems, in violation of the First Amendment and Wis. Stat. § 51.61.

2. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

3. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants Timberlake, Easterday and McCulloch. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint

if the department accepts service on behalf of defendants.

5. A copy of the complaint, this order, summons for defendant Watters and United States Marshal service forms will be forwarded to the United States Marshal for service on defendant Watters.

6. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

Entered this 21st day of September, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge