Celia v. Kane et al Doc. 9

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

ROBERT ANTHONY CELIA,	
Plaintiff,	No. C13-3018-MWB
vs. MIKE KANE, RYAN MOORE, ZDRAZIL, Defendants.	ORDER

The matter before the court is an order dated September 24, 2013 (Doc. No. 8). Pursuant to such order, the court directed the plaintiff to submit an initial partial filing fee. On October 8, 2013, the plaintiff complied with the court's directive.

Read liberally, the plaintiff's complaint appears to assert a failure to protect claim. In light of the facts alleged by the plaintiff and the law, the court is doubtful that the plaintiff states a claim upon which relief can be granted. This is so because it appears that the plaintiff did not fully exhaust administrative remedies prior to commencing this action, see 42 U.S.C. § 1997e(a), and the facts suggest that the plaintiff told the defendants that he was generally having issues with others and had not told them that he had been threatened by a particular individual, that he elected to return to general population and that a significant amount of time passed between when he complained to the defendants and when he was assaulted, see Prater v. Dahm, 89 F.3d 538, 541-42 (8th Cir. 1996) (finding that a prisoner failed to show that a prison official "actually knew of the risk" to the prisoner when the prisoner told the official that he received threats from his roommate because, in part, after reporting the threats, the prisoner and his roommate told the official that there would be no trouble and the two "were incarcerated together for a substantial

period of time without incident"). Nevertheless, the court is unable to determine as a matter of law whether the plaintiff's complaint is frivolous or fails to state a claim within the meaning of 28 U.S.C. § 1915 or 28 U.S.C. § 1915A. Consequently, the court is of the opinion that the matter is best addressed after receipt of an answer and/or any dispositive motion deemed appropriate. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831, 104 L. Ed. 2d 338 (1989); *Money v. Moore*, 877 F.2d 9, 10 (8th Cir. 1989). The clerk's office shall serve the complaint on the defendants and mail a copy of the complaint to the Iowa Attorney General without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Iowa Attorney General shall notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants shall file an answer or other dispositive motion by no later than January 13, 2014.

IT IS THEREFORE ORDERED:

The clerk's office is directed to serve the complaint on the defendants and mail a copy of the complaint to the Iowa Attorney General without the prepayment of fees and costs. A copy of this order is to accompany the documents being served. The Iowa Attorney General is directed to notify the court immediately if he lacks the consent of the defendants to appear generally on their behalf and submit to the jurisdiction of the court. The defendants are directed to file an answer or other dispositive motion by no later than January 13, 2014.

IT IS SO ORDERED.

DATED this 10th day of December, 2013.

LEONARD T. STRAND UNITED STATES MAGISTRATE JUDGE

NOTICE OF LAWSUIT and REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO THE NAMED DEFENDANT(S) IN THE FOLLOWING CAPTIONED ACTION:

ROBERT ANTHONY CELIA,

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

Plaintiff,	No. C13-3018-MWB
vs.	
MIKE KANE, RYAN MOORE, ZDRAZIL,	
Defendants.	
	the entity on whose behalf you are addressed). A copy of m this court are attached. This complaint has been filed in of Iowa.
unnecessary costs of service of summons and complain acknowledging receipt of the complaint and notice of this	Procedure, you have an obligation to cooperate in saving at. Please sign the enclosed document where appropriate a pending lawsuit and waiving formal service of summons. the United States Clerk's Office in the envelope provided
I affirm that this notice and request for waiver of plaintiff, this $\frac{12/10/13}{}$, 2013.	of service of summons is being sent to you on behalf of the
	/s/ djs, Deputy Clerk
	Signature (Clerk's Office Official)

Northern District of Iowa

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF LAWSUIT, and WAIVER OF SERVICE OF SUMMONS

(**Return this document with Office in the envelope provide	hin thirty days after _	12/10/13	, to the United States	Clerk'
	FOR THE NORT	STATES DISTRIC HERN DISTRICT FRAL DIVISION		
ROBERT ANTHONY CEL	JIA,			
Plaintiff,			No. C13-3018-MWB	
VS.				
MIKE KANE, RYAN MOO	ORE, ZDRAZIL.			
Defendan				
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	alf I am acting) be serv	ed with judicial prod	al copy of the complaint by not requir	
jurisdiction or venue of the co a judgment may be entered as	ourt except for objection gainst me (or the entity ivil Procedure is not so	ns based on a defect on whose behalf I a erved within 60 days	fenses or objections to the lawsuit of in the service of summons. I understarm acting) if an answer or motion under safter	and tha
Date	Signature			
	Printed name			
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Date	(Title) Signature	•	(Entity)	
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(Entity)

Printed name

(Title)

Address Form

Case Number: C13-3018-MWB Date: December 10, 2013

To: Clerk of Court

RE: Service on Named Defendants

Below, please find the known (or likely) addresses for the following persons/entities who have been named as defendants to this action:

Defendant: All Defendants

Fort Dodge Correctional Facility