

UNITED STATES DISTRICT COURT  
 DISTRICT OF MAINE

DAVID J. WIDI, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	2:12-cv-00188-JAW
	)	
PAUL MCNEIL, et al.,	)	
	)	
Defendants.	)	

**ORDER ON PLAINTIFF’S MOTION TO STRIKE**

This lawsuit has now been pending for over five years and this Order helps explain why the docket has become so tangled and why the case has proven so difficult to resolve. On June 13, 2012, David J. Widi, Jr. filed a complaint against numerous state of Maine defendants, alleging violations of his civil rights from a law enforcement search and seizure at his residence on November 28, 2008. *Compl.* (ECF No. 1). On July 13, 2012, the Magistrate Judge screened the complaint and specifically authorized Mr. Widi to proceed against five defendants, but she did not address the claims against the remaining thirty-five defendants, including Lieutenant Cady and Officer Brown. *Order for Service After Screening Compl. Pursuant to 28 U.S.C. § 1915A* (ECF No. 6). Mr. Widi twice amended his complaint and on February 11, 2015, the Court screened the Second Amended Complaint as to those defendants not screened on July 13, 2012. *Screening Order, Order Vacating in part Earlier Order Denying Mot. for Leave to File Second Am. Compl. as to Served Defs., Order Granting in part Mot. to File Second Am. Compl., Order Striking Portions*

*of the Second Am. Compl., and Order Denying Mot. to Stay* (ECF No. 270). In its Screening Order, the Court allowed Mr. Widi to proceed against Lieutenant Cady and Officer Brown on Count II, excessive force, but not on Counts III, IV, V or VI. *Id.* at 35-39. Counts III and V alleged illegal sniff searches of his company van and Counts IV and VI alleged illegal seizure of the van and the omission of probable cause factors in obtaining a warrant to search the van. *Second Am. Compl.* ¶¶ 76-104 (ECF No. 191).

On May 4, 2015, Mr. Widi moved for reconsideration of the Screening Order. *Mot. for Recons.* (ECF No. 292). On December 8, 2015, the Court reiterated its ruling on Count III of the Second Amended Complaint, but it allowed Mr. Widi to provide some proof for his assertions related to Counts IV, V, and VI. *Order on Mot. for Recons. and Mot. Pursuant to Fed. R. of Civ. Pro 60* (ECF No. 325). On March 16, 2016, Mr. Widi responded to the December 8, 2015 order. *Resp. to Order on Mot. for Recons. and Mot. Pursuant to Fed. R. of Civ. P. 60 with Accompanying Documentary Evid. and Mot. for Disc.* (ECF No. 351). On January 10, 2017, the Court allowed Counts IV, V and VI to proceed against Lieutenant Cady and Officer Brown. *Order on Mot. for Recons.* (ECF No. 392).

On January 23, 2017, Mr. Widi filed for reconsideration of the Court's Order on his motion for reconsideration and he requested leave to file an interlocutory appeal of the Court's Order. *Mot. for Recons. of ECF No. 392 or Leave to File an Interlocutory Appeal* (ECF No. 400). On January 24, 2017, Defendants Kevin Cady and Robert Brown moved to dismiss certain counts of Mr. Widi's Second Amended

Complaint. *Def.s. Kevin Cady and Robert Brown's Mot. to Dismiss Counts IV, V and VI* (ECF No. 403). On February 11, 2017, Lieutenant Cady and Officer Brown responded to Mr. Widi's motion for reconsideration or motion for leave to file interlocutory appeal. *Def.'s Kevin Cady and Robert Brown's Obj. to Pl.'s Mot. for Recons. of ECF No. 392 or Leave to File an Interlocutory Appeal* (ECF NO. 412).

On March 7, 2017, Mr. Widi moved for an order requiring Defendants Cady and Brown to serve him with both their motion to dismiss (ECF No. 403) and their response to his motion for reconsideration and motion for leave to file interlocutory appeal (ECF No. 412). *Mot. for Service of ECF No. 403 and ECF No. 412 with Nunc Pro Tunc Extension of Time to File Opp'n and Reply* (ECF No. 416). On March 7, 2017, the Court ordered counsel for Defendants Cady and Brown to serve Mr. Widi with copies of these pleadings. *Order* at 2 (ECF No. 418).

On April 3, 2017, however, Mr. Widi moved to strike both the Defendants Cady and Brown's motion to dismiss and their response to his motion for reconsideration or leave to file interlocutory appeal. *Mot. to Strike ECF No. 403 and ECF No. 412* (ECF No. 426). The basis of his motion is that he had still not "received service of either of these[] pleadings." *Id.* at 1. Mr. Widi moved to strike both pleadings for "want of prosecution." *Id.* at 2. On April 5, 2017, Defendants Cady and Brown filed a response to Mr. Widi's motion to strike, confirming that they had sent Mr. Widi copies of their motion to dismiss and their response to his motion for reconsideration or motion for leave to file interlocutory appeal on April 4, 2017 and noting that their

failure to do so earlier was “inadvertent.” *Def’s. Kevin Cady and Robert Brown’s Obj. to Pl.’s Mot. to Strike ECF No. 403 and ECF No. 412* (ECF No. 427).

On April 24, 2017, Mr. Widi moved to extend the time to May 15, 2017 for filing his response to their motion to dismiss and his reply to their response to his motion for reconsideration and motion for leave to file interlocutory appeal. *Mot. to Enlarge Time to File Resp. to ECF # 403 and ECF # 412* (ECF No. 430). On April 25, 2017, the Court granted the motion for extension, making May 15, 2017, the date for Mr. Widi’s response to Defendant Cady and Brown’s motion to dismiss and his reply to their response to his motion for reconsideration and motion for leave to file interlocutory appeal. *Order* (ECF No. 432). On May 16, 2017, Mr. Widi filed a second motion to extend time, asking for until June 1, 2017. *Second Mot. to Enlarge Time to File Resp. to ECF # 403 and ECF # 412* (ECF No. 439). On May 17, 2017, the Court granted the motion. *Order* (ECF No. 440). On June 5, 2017, Mr. Widi filed a reply to the Defendants Cady and Brown’s response to his motion for reconsideration or motion for leave to file interlocutory appeal. *Reply to Defs. Cady and Brown’s Obj. to Mot. for Recons. of ECF No. 392 or Leave to File Interlocutory Appeal* (ECF No. 450).

On June 5, 2017, Mr. Widi also filed a third motion to enlarge time to file his opposition to Defendants Cady and Brown’s motion to dismiss, asking for until June 14, 2017. *Third Mot. to Enlarge Time to File Opp’n to Defs. Brown and Cady filed a Mot. to Dismiss for Failure to State a Claim with Regards to Counts IV, V and VI of the Second Am. Compl.* (ECF No. 449). On June 9, 2017, the Court granted this motion. *Order* (ECF No. 452). On June 26, 2017, Mr. Widi filed a response to

Defendant Cady and Brown's motion to dismiss. *Opp'n to Defs. Brown and Cady's Mot. to Dismiss for Failure to State a Claim with Regards to Counts IV, V and VI of the Second Am. Compl. (ECF No. 403)* (ECF No. 455). On July 10, 2017, Defendants Cady and Brown filed a reply to Mr. Widi's response to their motion to dismiss. *Reply Mem. of Law in Support of Defs. Kevin Cady and Robert Brown's Mot. to Dismiss Counts IV, V and VI* (ECF No. 460).

The upshot of all of these motions is that Mr. Widi's motion for reconsideration and motion for leave to file interlocutory appeal, which was filed on January 23, 2017, was fully briefed and ready for decision on June 5, 2017 with the filing of Mr. Widi's reply, and the Defendants' motion to dismiss, which was filed on January 24, 2017, was fully briefed and ready for decision on July 10, 2017.

On June 12, 2017, the Court issued an order denying Mr. Widi's motion for reconsideration and motion for leave to file interlocutory appeal. *Order on Mot. for Recons. of ECF No. 392 or Leave to File an Interlocutory Appeal* (ECF No. 453). On September 19, 2017, the Court issued an order granting in part and denying in part the Defendants Cady and Brown's motion to dismiss. *Order on Defs. Kevin Cady and Robert Brown's Mot. to Dismiss Counts IV, V and VI* (ECF No. 489).

The Court's numerous extensions of time effectively obviated the grounds underlying Mr. Widi's Motion to Strike ECF No. 403 and ECF No. 412 (ECF No. 426). Defendants Cady and Brown acknowledged their inadvertent error in failing to send documents to Mr. Widi and sent the proper documents to him, and the Court granted Mr. Widi numerous extensions that allowed him time to respond to their late service.

Both motions were fully briefed and decided on their merits. Accordingly there is no reason for the Court to strike either Defendants Cady and Brown's motion to dismiss or their response to his motion for reconsideration and motion for leave to file interlocutory appeal. The Court therefore DISMISSES as moot Plaintiff David J. Widi's Motion to Strike ECF No. 403 and ECF No. 412 (ECF No. 426).

SO ORDERED.

/s/ John A. Woodcock, Jr.  
JOHN A. WOODCOCK, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 20th day of September, 2017