

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:13-CV-159-FDW-DCK**

JEFFREY RANDOLPH WATTERSON, and)
RANDOLPH ALEXANDER WATTERSON,)
)
Plaintiffs,)
)
v.)
)
JASON GREEN, et al.,)
)
Defendants.)
)

ORDER

THIS MATTER IS BEFORE THE COURT on Plaintiff Randolph A. Watterson’s “...Motion For Sanctions And Default Judgment Against Defendant Green” (Document No. 181). The pending motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion, the record, and applicable authority, the undersigned will deny the motion, without prejudice.

On September 7, 2016, the undersigned issued an “Order” (Document No. 154) granting “Plaintiff Randolph A. Watterson’s Motion To Compel Discovery” (Document No. 150) and requiring Defendant Green to provide complete discovery responses to Plaintiff on or before September 12, 2016. The Court specifically noted that Defendant Jason Green had failed to even respond to the motion to compel. (Document No. 154). In addition, the Court observed that Plaintiff’s motion indicated that Defendant Green’s counsel had previously represented that discovery responses would be provided no later than August 19, 2016. Id. (citing Document No. 150 p.2).

On September 23, 2016, Plaintiff filed his “Motion For Sanctions Against Defendant Green” (Document No. 157) arguing that Defendant Green had failed to provide discovery

responses as ordered by the Court. On October 25, 2016, the undersigned denied Plaintiff's "Motion For Sanctions Against Defendant Green" (Document No. 157), without prejudice. (Document No. 175). The Court then provided Defendant Green "one more opportunity to provide full and complete discovery responses to Plaintiff Randolph A. Watterson." (Document No. 175, p.3). Defendant Green was ordered to provide discovery responses by November 1, 2016. Id.

On November 3, 2016, Defendant Green's "Notice Of Service" (Document No. 180) was filed with the Court verifying "that complete discovery responses have been served upon Plaintiff Randolph A. Watterson on or before 11/1/16." Notably, Defendant's Green's "Notice..." does not attach any evidence of service. Id.

Plaintiff Randolph A. Watterson's "...Motion For Sanctions And Default Judgment Against Defendant Green" (Document No. 181) was apparently drafted on or about November 1, 2016, and was received by the Court and docketed on November 4, 2016. By this latest motion for sanctions, Plaintiff contends that as of November 1, 2016, he had not received the discovery responses from Defendant Green as ordered by the Court. (Document No. 181, p.3) (citing Document No. 175). Plaintiff's motion cites "the Avery-Mitchell Correctional Institution[']s Legal Mail Log-Book Maintained By D.P.S. Mailroom Supervisor Mr. Weese," but Plaintiff apparently failed to include the cited "Exhibit #1." Id.

On or about November 14, 2016, the Court received a letter from Plaintiff stating that, contrary to Defendant Green's "Notice..." as of November 9, 2016, he had still not received Jason Green's discovery responses. (Document No. 185). Plaintiff further states that the prison mailroom could verify that he did not receive any legal mail from Defendant Green's counsel as alleged in the "Notice Of Service" (Document No. 180). Id.

Defendant Green then filed a “Response In Opposition To Motion For Sanctions” (Document No. 186) on November 21, 2016. Defendant argues that he should not be sanctioned for failure to provide discovery and that he “has in fact attempted to provide Discovery to the Plaintiff in a timely manner.” (Document No. 186, p.3).

As an initial matter, the undersigned finds that it was premature for *pro se* Plaintiff to file the pending motion on the date the discovery responses were due. See (Document No. 181). However, Plaintiff has made an additional filing asserting that as of November 9, 2016, he still had not received the ordered discovery responses. See (Document No. 185).

Defendant Green’s filings offer little, if any, help in determining when he mailed his discovery responses to Plaintiff. See (Document Nos. 180 and 186). For example, Defendant does not explicitly state: (1) when he sent the discovery responses; (2) how he sent the discovery responses; (3) or when they were received by Avery/Mitchell Correctional Institution or Plaintiff. Defendant has also not described or produced any receipt or other evidence showing when or how discovery was delivered to Plaintiff.

Based on the foregoing, the undersigned will once again direct Defendant Green to provide his full and complete discovery responses to Plaintiff Randolph A. Watterson. Defendant Green’s counsel shall send the discovery responses by **certified United States Mail, return receipt requested**, to:

Randolph Alexander Watterson
#0427985
Avery/Mitchell Correctional Institution
600 Amity Park Rd.
Spruce Pine, NC 28277

Defendant Green shall file a “Notice Of Service” with this Court stating the date the discovery was sent, and providing a copy of the mailing envelope, as well as evidence that the

discovery was sent by certified mail, by **December 16, 2016**. Upon receiving the return receipt indicating the certified mail was received, Defendant shall also file a copy of that document with the Court.

The Court will deny the pending motion without prejudice; however, the Court will seek copies of relevant mail room logs from the Avery/Mitchell Correctional Institution. If the Court finds evidence that is inconsistent with the parties' filings discussed herein, the Court may reconsider the matter of sanctions against either party.

IT IS, THEREFORE, ORDERED that Plaintiff Randolph A. Watterson's "...Motion For Sanctions And Default Judgment Against Defendant Green" (Document No. 181) is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Defendant Jason Green shall serve his complete discovery responses on Plaintiff Randolph A. Watterson **on or before December 16, 2016**, as directed herein.

IT IS FURTHER ORDERED that the Avery/Mitchell Correctional Institution shall send a copy of its mail room logs for **October 27, 2016 through November 2, 2016**, indicating the mail received by **Randolph A. Watterson, #0427985** on all of those dates, as soon as practicable.

The Clerk of Court is directed to send a copy of this Order by certified United States mail, return receipt requested, to: (1) Plaintiff Randolph A. Watterson; (2) Plaintiff Jeffrey R. Watterson; and (3) to the Avery/Mitchell Correctional Institution, Attention Mail Room.

SO ORDERED.

Signed: December 9, 2016



David C. Keesler
United States Magistrate Judge

