

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

JUL 16 2009

ANDREW LEE HARRIS, )
Plaintiff, )
v. )
SHERIFF TADLOCK and )
RUSS MILLER, )
Defendants. )

WILLIAM B. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk

No. CIV 09-057-RAW-SPS

OPINION AND ORDER

The defendants have filed a motion to dismiss this action, alleging plaintiff was discharged from DOC custody, but he has failed to notify the court or the defendants of his current address [Docket #26]. The defendants assert they cannot serve plaintiff with discovery requests or take his deposition, because they are unable to contact him.

According to the DOC website at http://www.doc.state.ok.us/, plaintiff was discharged from DOC custody on April 16, 2009. On April 27, 2009, he filed a notice of change of address with the court, indicating he had moved to Idabel, Oklahoma [Docket #19]. The notice, however, failed to include a certificate of service, as required by Rule 5 of the Federal Rules of Civil Procedure and Local Civil Rule 5.5. On May 21, 2006, the defendants filed their motion to dismiss, alleging their answers to plaintiff's complaint were returned marked, "returned to sender, reason declined: unclaimed."

The defendants apparently did not note plaintiff's change of address on the docket, so they mistakenly mailed their answers to the facility where he had been incarcerated. Therefore, plaintiff has not received copies of any filing that were submitted after his release.

The Court Clerk is directed to send plaintiff a copy of the docket sheet in this case, all filings submitted after his release, and Local Civil Rule 5.5. Plaintiff is admonished to comply with the applicable Federal Rules of Civil Procedure and the Local Civil Rules in all future filings. Because the defendants mailed their documents to the wrong address after the docket reflected plaintiff's post-release address, plaintiff had no notice of the filings.

**ACCORDINGLY**, the defendants' motion to dismiss [Docket #26] is DENIED.

**IT IS SO ORDERED** this 16<sup>th</sup> day of July 2009.

A handwritten signature in black ink, appearing to read "Ronald A. White", written over a horizontal line.

**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**