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**IN THE
COURT OF APPEALS OF INDIANA**

LOKMAR ABDUL-WADOOD,)

Appellant-Plaintiff,)

vs.)

No. 49A02-0707-CV-623

OFFICER ERNESTINE COLE, et al.,)

Appellees-Defendants.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Theodore Sosin, Judge
Cause No. 49D05-0605-CT-19260

September 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Lokmar Abdul-Wadood appeals the trial court's orders granting summary judgment in favor of appellee-defendant Officer Ernestine Cole and refusing to enter a default judgment against two other appellees-defendants. Finding no error, we affirm.

FACTS

On May 10, 2006, inmate Abdul-Wadood filed a complaint against Officer Cole and others, alleging that the defendants had hindered his access to the courts by refusing to allow him access to his legal materials. We are able to glean from the scant record that Abdul-Wadood was transferred to the Westville Correctional Facility (WCF) in February 2006. At the time of his transfer, he had approximately ten boxes of legal materials in his possession. It is the policy of WCF, however, that inmates are permitted to keep only one box of legal materials in their cells. Therefore, Officer Cole contacted Abdul-Wadood and informed him that she would keep his boxes of legal materials but that when he needed certain documents, he should contact her with the request and she would send him the specific documents he needed. There is no evidence in the record that Abdul-Wadood ever made a request for documents to be sent to him.

On February 23, 2007, Officer Cole filed a motion for summary judgment, arguing that there was no evidence that she had ever denied a request that documents be sent to Abdul-Wadood; indeed, as noted above, there is no evidence that any such request had ever been made. On May 1, 2007, the trial court granted summary judgment in Officer Cole's favor, finding that Abdul-Wadood had "failed to request any necessary legal documents from defendant Cole." Appellant's App. p. 3.

Additionally, Abdul-Wadood filed at least two motions for default judgment against the other two defendants, who have never answered or otherwise taken part in this litigation. On October 23, 2006, and January 24, 2007, the trial court summarily denied the motions for default judgment. Abdul-Wadood now appeals.

DISCUSSION AND DECISION

I. Officer Cole

Abdul-Wadood first argues that the trial court erroneously granted summary judgment in Officer Cole's favor. Summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning, 754 N.E.2d at 909. To establish a denial of access to the courts, an inmate "must prove that he suffered an actual injury by showing that unjustified acts or conditions hindered his ability to pursue a nonfrivolous legal claim." Johnson v. Barczak, 338 F.3d 771, 772 (7th Cir. 2003) (applying Lewis v. Casey, 518 U.S. 343 (1996)).

Here, Officer Cole attested that Abdul-Wadood never requested that any of his legal materials be sent to him. Appellee's App. p. 15-17. Abdul-Wadood did not designate any evidence to the contrary, and although he mentions an exhibit bolstering his argument that he did make such a request, he has not included the exhibit in the record on appeal. Inasmuch as there is no issue of material fact regarding the lack of a

request for his legal materials, we can only conclude that Abdul-Wadood has failed to prove that Officer Cole committed any “unjustified acts” that hindered his ability to pursue a legal claim. Consequently, we find that the trial court properly granted summary judgment in Officer Cole’s favor.

II. Other Defendants

Abdul-Wadood also argues that the trial court erroneously refused to grant a default judgment against other defendants who have never participated in this litigation. The grant or denial of a motion for a default judgment is committed to the trial court’s sound discretion, and we will reverse only if the decision is clearly against the logic and effect of the facts and circumstances before the court. Bedree v. DeGroote, 799 N.E.2d 1167, 1172 (Ind. Ct. App. 2003). Abdul-Wadood’s motions for default judgment are not included in the record on appeal, and the trial court’s summary denials of those motions shed no light on the basis for its denials. We note, however, that the Chronological Case Summary does not reflect that service of the complaint was ever achieved on these two defendants, nor has Abdul-Wadood included evidence in the record on appeal that these defendants were served. In fact, Abdul-Wadood admits in his brief that when he attempted to serve the defendants, he discovered that one of them was no longer employed at WCF. Under these circumstances, and given the disfavor with which default judgments are viewed in this State, we cannot conclude that the trial court abused its discretion by denying Abdul-Wadood’s motions for default judgment.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.