

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted October 22, 2024*

Decided October 29, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-2703

STEVE L. MANSON,
Plaintiff-Appellant,

v.

TYLER KOCH,
Defendant-Appellee.

Appeal from the United States District
Court for the Central District of Illinois.

No. 21-3076

Sara Darrow,
Chief Judge.

ORDER

Steve Manson, a former Illinois prisoner, sued a correctional officer for violating his constitutional rights by denying him access to meals while COVID-19 movement restrictions were in effect. *See* 42 U.S.C. § 1983. Before ultimately entering summary judgment for the defendant, the district court denied Manson's motions for recruited counsel, contempt against the prison, and sanctions against opposing counsel. On

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

appeal, Manson challenges only the pre-judgment rulings. Because the district court did not abuse its discretion, we affirm.

From December 4, 2019, until April 2, 2021, Manson was imprisoned at Western Illinois Correctional Center in Mount Sterling, Illinois. At this time, the prison had precautions in place to prevent the spread of the coronavirus. One related to the placement and retrieval of prisoners' meals. For lunch and dinner, correctional officers brought carts of food trays to the prisoners' housing units and placed them inside each wing near the door. The prison's rules required each prisoner to retrieve a food tray and return to his assigned cell to eat. Because he had a bad knee and used crutches, Manson would ask a guard to bring a food tray to his cell, though Manson did not have a "feed in cell" pass. According to Manson, Officer Tyler Koch refused to do so whenever he was on duty, causing Manson to miss meals.

Manson brought this § 1983 suit against prison officials for denying him meals. Along with his complaint, Manson filed a motion for recruited counsel. The district court screened Manson's complaint, *see* 28 U.S.C. § 1915A, and allowed him to proceed on a claim that Koch had deprived him of food in violation of the Eighth Amendment. The court denied Manson's motion for recruited counsel because he did not demonstrate that he had attempted to obtain counsel on his own.

Manson was released from prison within a month of filing his lawsuit. As the case progressed, Manson filed additional motions for recruited counsel, and the district court denied each motion because, although Manson discussed his attempts to contact lawyers, he failed to show that he had made reasonable efforts consistent with the court's instructions. For example, the court told Manson to write to law firms or attorneys and provide copies of the letters and any responses; instead, Manson described efforts to contact various lawyers by telephone and alleged that they requested a fee for denial letters. The court also concluded that Manson appeared capable of litigating the relatively straightforward case on his own.

At Manson's request, the court issued a subpoena to Western Illinois Correctional Center for audio and video evidence that Manson wished to obtain. Manson later moved to hold the prison in contempt for not turning over the materials. The district court denied this motion, explaining that Manson had not established that he had properly served the subpoena on the non-party prison.

At one point, the defendant moved for an extension of time to complete discovery and gave as one reason that counsel could not schedule Manson's deposition because his phone number had been "disconnected." Manson responded with a motion for sanctions against defense counsel for "lying" about the phone number being disconnected. The court denied the motion because Manson did not show that the statement prejudiced him or affected the case in any manner—the discovery extension would have been granted anyway because the parties had been unable to schedule Manson's deposition.

The court later entered summary judgment for Koch. It concluded that Manson provided no evidence that Koch was personally responsible for Manson missing meals and that, even if he were responsible, Manson did not present evidence that he had missed so many meals that the deprivation posed a significant risk to his health.

On appeal, Manson does not dispute the summary-judgment decision. He challenges only the rulings on the motions to recruit counsel, to hold the prison in contempt, and to sanction defense counsel. We review those decisions for abuse of discretion. *See Pruitt v. Mote*, 503 F.3d 647, 658 (7th Cir. 2007) (en banc) (recruitment of counsel); *Seventh Ave., Inc. v. Shaf Int'l, Inc.*, 909 F.3d 878, 880 (7th Cir. 2018) (contempt); *Harrington v. Duszak*, 971 F.3d 739, 741 (7th Cir. 2020) (denial of sanctions).

Manson first argues that the district court should have recruited counsel because his case is complex, and he was incapable of litigating for himself. When deciding whether to recruit counsel under 28 U.S.C. § 1915(e)(1), courts must first ask whether "the indigent plaintiff [has] made a reasonable attempt to obtain counsel or been effectively precluded from doing so," and if so, whether "given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Pruitt*, 503 F.3d at 654. Determining whether a plaintiff has made reasonable efforts himself "is a mandatory, threshold inquiry that must be determined before moving to the second inquiry." *Balle v. Kennedy*, 73 F.4th 545, 559 (7th Cir. 2023) (citation omitted).

Here, the district court permissibly concluded that Manson—who was not incarcerated for most of the litigation—never substantiated his reasonable efforts to find counsel independently. In ruling on the first motion, the court explained that Manson could make that showing by providing a copy of letters he sent to counsel along with any responses. Yet Manson did not do so in any of his three other motions: each time, Manson stated that he had attempted to obtain counsel, but he failed to provide objective evidence to substantiate his efforts, despite the court's instructions. The

district court could have denied Manson's motions on this basis alone. *See id.* at 559–60. Still, in denying the next three motions, the court also ruled that Manson was competent to litigate his own case because he had been able to adequately communicate his claims to the court, and the facts of the case did not appear overly complex. The district court applied the correct standard, and its decisions were well within its discretion.

Nor did the district court abuse its discretion by denying Manson's motion to hold non-party Western Illinois Correctional Center in contempt for failing to produce materials in response to a subpoena. Under Rule 45(g) of the Federal Rules of Civil Procedure, a court may hold a person in contempt "who, *having been served*, fails without adequate excuse to obey the subpoena or an order related to it" (emphasis added). The record here, however, does not show that Manson served the relevant subpoena on the prison, and Manson does not contend on appeal that he did.[†] Absent that showing, the district court had no authority to hold the prison in contempt under Rule 45 or otherwise. *See Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 749 (7th Cir. 2007) (abuse of discretion when the district court entered contempt order against party that was not properly served).

Finally, Manson argues that the district court should have sanctioned defense counsel for allegedly lying to the court when moving for an extension of time to complete discovery. But the district court reasonably explained that, even if it was inaccurate for counsel to say the phone line had been "disconnected," Manson did not deny refusing to schedule a deposition, which necessitated the discovery extension. It was not an abuse of discretion, *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 55 (1991), for the court to deny sanctions based on its conclusion that any misstatement was not material to the case or prejudicial to Manson.

AFFIRMED

[†] There is some indication that the prison received a subpoena from Manson because in his contempt motion, Manson states that the prison told him that it did not have the materials he was seeking. Koch suggests that Manson is confusing this case with another pending lawsuit, in which the prison is a defendant. Regardless, if the prison did not provide materials because they were not in its possession, contempt would not be appropriate.