

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALFRED E. SCHMIDT,

Plaintiff,

v.

LINCOLN COUNTY, State of Wisconsin,
PETER KACHEL, P.E. Highway Commissioner,
and LINCOLN COUNTY HIGHWAY COMMITTEE,

Defendants.

OPINION AND
ORDER

02-C-0286-C

Pro se plaintiff Alfred E. Schmidt has submitted a document titled “Amendment to Complaint,” which I construe as a motion to amend his complaint pursuant to Fed. R. Civ. P. 15(a). Rule 15(a) states that “a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served” and that otherwise amendments are permissible “only by leave of court.” Plaintiff requires leave of the court to amend his complaint because defendants have filed an answer to his complaint. Whether to grant leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court. Sanders v. Venture Stores, Inc., 56 F.3d 771, 773 (7th Cir. 1995). The Court of Appeals for the Seventh Circuit has noted that a motion to amend should not be granted if it will unduly prejudice the opposing party. Id.; Continental Bank N.A. v. Meyer, 10 F.3d

1293, 1298 (7th Cir. 1993) (citation omitted). Prejudice does not appear to be an issue in this case, however, because defendants have already filed an amended answer. Therefore, I will grant plaintiff's motion to amend his complaint.

In filing their amended answer, defendants have treated plaintiff's "Amendment to Complaint" as an addendum to plaintiff's original complaint, rather than as a free-standing substitute for the original complaint. Accordingly, I will combine plaintiff's original complaint, filed May 22, 2002, and his "Amendment to Complaint," filed September 20, 2002, to form the operative pleading in this case. Finally, I note that plaintiff's "Amendment to Complaint" includes several "affidavits" as attachments. The court will treat these documents as part of the amended complaint, as defendants have done in their amended answer.

IT IS ORDERED that plaintiff's motion to amend his complaint pursuant to Fed. R. Civ. P. 15(a) is GRANTED. The amendment and original complaint are to be considered together as the operative pleading in this case. Defendants' answer to the amended complaint is considered to have been filed as of the date of this order.

Entered this 2nd day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge