

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

ORDER

02-C-459-C

GEORGE DALEY, Director for the Bureau of Health Services; SHARON ZUNKER, Assistant Director of B.H.S.; MARC CLEMENTS, W.C.I.'s security director; BETH DITTMANN, Health Services Unit (H.S.U.) Supervisor at W.C.I.; PAM BARTELS, Supermax's H.S.U. Supervisor; DR. PHILLIPE BELGADO, Doctor at W.C.I.; DR. HASSELHOFF, doctor at Supermax; S. HOUSER, Captain at W.C.I.; WILLIAM SCHULTZ, staff at W.C.I.; KEN LANGE, nurse at Supermax; C.O. FRIDAY, guard at W.C.I.; and SGT. BURNS, a sergeant at W.C.I.;

Defendants.

On June 17, 2003, United States Magistrate Judge Stephen Crocker granted in part and denied in part plaintiff's motion to compel discovery and for sanctions under Fed. R. Civ. P. 11. Now plaintiff has submitted a letter dated June 21, 2003, which I construe as an objection to the magistrate judge's order under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A). In addition, plaintiff has moved 1) for an enlargement of the July 17, 2003,

deadline in which to file dispositive motions to at least August 10, 2003; 2) to stay the schedule for briefing the motion for summary judgment already filed by defendants Bartels, Hasselhoff and Lange until these defendants comply with plaintiff's discovery requests; and 3) for an order forbidding the remaining defendants from filing a motion for summary judgment until at least 60 days after defendant Robert Burns has answered plaintiff's complaint and all his discovery requests. Finally, plaintiff asks for a hearing on his motions.

Disposing of plaintiff's last request first, it is not this court's practice to schedule hearings on procedural motions of the type plaintiff has filed. Plaintiff has provided no convincing argument why I should depart from standard practice. Therefore, plaintiff's request for a hearing on his procedural motions will be denied.

The standard for reviewing a pretrial order of a magistrate judge is whether it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Nothing in plaintiff's objections convinces me that it was clearly erroneous or contrary to law for the magistrate judge to decline to sanction defense counsel for failing to know at the outset of this lawsuit that the "Sgt. Burns" plaintiff named in the caption of his complaint was former prison employee Robert Burns and not an employee presently working at the institution, Tracy Burns. Plaintiff has not been prejudiced by this error. Robert Burns has been served with plaintiff's complaint and will be filing an answer to it in the near future. In addition, the magistrate judge ruled appropriately that Robert Burns provide promptly

to plaintiff answers to relevant discovery plaintiff sought without delaying the response until after he files his answer to plaintiff's complaint.

Also, it was not clearly erroneous or contrary to law for the magistrate judge to deny plaintiff's motion to compel defendants Bartels, Hasselhoff and Lange to respond differently to plaintiff's discovery requests. I agree with the magistrate judge that defendants met their discovery obligations by providing everything plaintiff asked for that is relevant to his claim that he was deprived of medical care, as well as some information that is only marginally relevant, and that the only information not provided is irrelevant.

Given my disposition of plaintiff's objections to the magistrate judge's order, I will deny as moot plaintiff's motion to stay the schedule for briefing the motion for summary judgment already filed by defendants Bartels, Hasselhoff and Lange until these defendants comply with plaintiff's discovery requests.

Finally, plaintiff's motions for an enlargement of the July 17, 2003, deadline in which to file dispositive motions and for an order forbidding the remaining defendants from filing a motion for summary judgment until at least 60 days after defendant Robert Burns has answered plaintiff's complaint and all his discovery requests will be denied.

I do not intend to order defendants to refrain from moving for summary judgment by the July 17 deadline. Assuming defendants do move for summary judgment, there will be no need to extend the deadline to allow plaintiff to file his own motion. Under the

court's procedures for briefing motions for summary judgment and the magistrate judge's preliminary pretrial conference order, plaintiff will have 30 days from the date defendants' motion is filed in which to oppose it. In opposing the motion, plaintiff will have an opportunity to review Burns' responses to his discovery requests and dispute defendants' proposed facts. In addition, he will be able to propose additional facts of his own that are necessary to support his position. Because the court's procedures allow plaintiff to submit in opposition to defendants' motion for summary judgment all the evidence he has to prove his claims, and because a non-moving party can be granted summary judgment in his favor if the evidence shows that he is entitled to it, there is no need for plaintiff to file his own motion. However, if defendants do not move for summary judgment by the July 17 deadline, plaintiff is free to renew his request for an enlargement of time in which to file a motion for summary judgment on his claims against the defendants other than Bartels, Hasselhoff and Lange.

ORDER

IT IS ORDERED that the decision entered by the United States Magistrate Judge on June 17, 2003, remains as entered because plaintiff has failed to show that the decision is clearly erroneous or contrary to law.

Further, IT IS ORDERED that plaintiff's motions for an enlargement of the July 17,

2003, deadline in which to file dispositive motions to at least August 10, 2003, to stay the schedule for briefing the motion for summary judgment filed by defendants Bartels, Hasselhoff and Lange until these defendants comply with plaintiff's discovery requests and for an order forbidding the remaining defendants from filing a motion for summary judgment until at least 60 days after defendant Robert Burns has answered plaintiff's complaint and all his discovery requests are DENIED.

Finally, IT IS ORDERED that plaintiff's request for a hearing on his motions is DENIED.

Entered this 14th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge