

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

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JERRY CHARLES,

Plaintiff,

v.

MATTHEW J. FRANK, JON LITSCHER,  
and DICK VERHAGAN,

Defendants.

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ORDER

02-C-0626-C

On November 6, 2003, this court denied defendants' motion for summary judgment, which had been filed initially as a motion to dismiss for plaintiff's failure to exhaust his administrative remedies. The motion was converted to a motion for summary judgment in an order entered on August 19, 2003. Earlier, on July 28, 2003, Magistrate Judge Crocker extended the deadline for filing dispositive motions in this case to "two weeks following the date of entry of the order denying the motion to dismiss." Now defendants have moved for an enlargement of time in which to file dispositive motions and a new trial date. As defendants point out in support of their motion, the questions remaining in this case go to the heart of the lawsuit: whether defendants can prove a legitimate penological and

compelling state interests in denying plaintiff the ability to wear his religious Dhikr beads and, if so, whether not allowing him to wear the beads is the least restrictive means of furthering those interests. These questions are legal questions that are amenable to disposition on a motion for summary judgment. Accordingly, I will grant a short enlargement of time in which to file dispositive motions and rescind the trial date.

I note that defendants suggest in their motion for more time to file dispositive motions that they may also wish to raise on summary judgment the questions whether defendants are entitled to qualified immunity for their actions and whether plaintiff is entitled to damages. As defendants know, plaintiff is seeking declaratory and injunctive relief as well monetary damages. Therefore, a finding that the individual defendants are immune would not result in termination of this lawsuit. See Jacobs v. City of Chicago, 215 F.3d 758, 774 (7th Cir.2000) (Easterbrook, J., concurring) (stating that qualified immunity defeats only a particular remedy, money damages, and that even if qualified immunity from damages is certain, the complaint may pass muster under Rule 12(b)(6)). In light of this fact, it may be prudent for defendants to focus their attention on the merits of plaintiff's claim in their motion for summary judgment. If the case survives summary judgment, I will establish a schedule for briefing the questions of damages and defendants' possible qualified immunity from them.

ORDER

IT IS ORDERED that the January 5, 2004 final pretrial conference and trial date scheduled in this case is RESCINDED, as is the December 8 deadline for identifying trial witnesses. The discovery cutoff date is EXTENDED to January 15, 2004.

Further, IT IS ORDERED that the deadline for filing dispositive motions is extended to December 15, 2003. Opposition briefs and other papers required by this court's summary judgment procedures to be submitted in opposition to a motion for summary judgment are to be filed and served no later than January 5, 2004. Reply briefs are to be served and filed no later than January 15, 2004.

Finally, IT IS ORDERED that if this case survives summary judgment on the merits of the case, a new trial date will be scheduled if there are material factual matters in dispute and a schedule will be established to brief the questions of damages and qualified immunity.

Entered this 25th day of November, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge