

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

-----  
GREGORY J. CARMODY,

Plaintiff,

v.

PHIL KINGSTON, TIM DOUMAS,  
GREG GRAMS, SGT. SCHNELLNER,  
MR. TOMAX, DR. BRIDGEWATER and  
MS. SIEDSCHLAG,

Defendants.  
-----

ORDER

03-C-61-C

Plaintiff has been allowed to proceed in this action on his claim that defendants violated his Eighth Amendment rights when they allowed him to suffer an insulin shock coma and then failed to provide him adequate medical care following the incident. Defendant has answered the complaint and a preliminary pretrial conference has been held. Now plaintiff has submitted a document dated May 28, 2003 titled "Voluntary Motion to Dismiss Without Prejudice." Plaintiff does not indicate on his motion that he has sent a copy to opposing counsel. However, the court has received an envelope addressed to opposing counsel from plaintiff in care of the court's address. I presume this envelope

contains a copy of plaintiff's motion for counsel. Although ordinarily it is not the court's practice to forward one party's mail to the other party, in this instance it appears that plaintiff simply misaddressed counsel's copy of his motion. Therefore, I am sending counsel a copy of plaintiff's motion with a copy of this order.

When a motion for voluntary dismissal is filed after the defendant has filed an answer as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper."

The preliminary pretrial conference order indicates that plaintiff advised the court and counsel for the defendants at the time of the conference that he was considering dismissing this case voluntarily. According to the order, counsel for defendants stated that he would not oppose dismissal without prejudice at this early date. In order to make the record clear on this point, defendants may have until June 16, 2003, in which to document in writing their agreement to a voluntary dismissal of this case without prejudice. Assuming such agreement is filed, then the clerk of court is directed to enter judgment dismissing this

case without prejudice to plaintiff's refiling his action at a later date.

Entered this 3rd day of June, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge