

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

EDWIN C. WEST,

Plaintiff,

v.

STEVE HAMILTON, AMY WYTTENBACH,
DENNIS SNYDER and DARLENE
HEIMERMANN-RAMSEY,

Defendants.

ORDER

04-C-211-C

On September 17, 2004, plaintiff asked to dismiss this case voluntarily. In an order entered on September 21, 2004, I told plaintiff that ordinarily, when a case has progressed as far as this one had, I would allow a voluntary dismissal only if the dismissal was “with prejudice,” meaning that plaintiff could not bring his claims against these defendants again. Because of this, I gave plaintiff until September 30, 2004, in which to withdraw his motion. Before plaintiff could respond to the September 21 order, defendants wrote to the court to advise that they had no objection to a dismissal “without prejudice” to plaintiff’s filing his lawsuit again at some future date. Assuming plaintiff would have no objection to such a dismissal, I entered an order dismissing the case on September 27, 2004. The next day, the court received from plaintiff a “Motion to Withdraw Voluntary Dismissal,” in which

plaintiff objected to a dismissal with prejudice. Although it appeared that plaintiff's stated objection was mooted when I dismissed the case without prejudice, I nevertheless offered plaintiff an opportunity to clarify his intentions no later than October 18, 2004. Now plaintiff has filed a motion to reopen the case and establish a new scheduling order.

In plaintiff's motion, he states that "after consult[ing] with the Wisconsin Coalition for Advocacy," he has "completely changed his mind and wishes to continue to prosecute this case." Accordingly, plaintiff's motion to reopen will be granted. Plaintiff should bear in mind, however, that if he were to seek a second voluntary dismissal before this case reaches final resolution, the dismissal will be with prejudice. Fed. R. Civ. P. 41(a)(1).

Plaintiff asks that the magistrate judge rule on the motion he filed just before his case was dismissed voluntarily, for modification of the September 7, 2004 order setting the boundaries of a protective order. I have asked the magistrate judge to review plaintiff's motion and rule on it as promptly as possible.

Although this case has been closed for a month, the parties still may be able to adhere to the deadlines established in the magistrate judge's preliminary pretrial conference order. If either party believes that the deadlines require modification, however, he may write to explain the need and request that another scheduling conference be held.

ORDER

IT IS ORDERED that plaintiff's motion to reopen this case is GRANTED.

Entered this 27th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge