

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

MARVIN A. JOHNSON,

Petitioner,

v.

JIM GENTILE, T. WALSH,
C/O ZIEMANN, sued in their
individual capacities, and
DAREN SWENSON, sued in his
individual and official capacity,

Respondents.

ORDER

04-C-257-C

Petitioner Marvin Johnson has submitted notice that he does not intend to prosecute this case and wishes it to be dismissed. He appears to know that if the case is dismissed at this time, he will forfeit the \$52.73 he paid as the initial partial payment of the filing fee and will be obligated under the 1996 Prison Litigation Reform Act to pay the remainder of the fee in monthly installments pursuant to 28 U.S.C. § 1915(b)(2).

Rule 41(a)(1) provides:

...an action may be dismissed by the plaintiff without order of the court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for

summary judgment. . . Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

In this case, the respondents have not yet answered or moved for summary judgment. Therefore, petitioner is free to dismiss his case voluntarily, without prejudice to his refiling his complaint at a later date.

Accordingly, I accept petitioner's notice of voluntary dismissal, and direct the Clerk of Court to close this file.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge