

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

LUIS A. RAMIREZ,

Plaintiff,

v.

GARY R. McCAUGHTRY, MATTHEW
FRANK, CURT JANSEN, STEVEN
SCHUELER, MARC CLEMENTS and
STEVEN CASPERSON,

Defendants.

ORDER

04-C-335-C

Plaintiff was granted leave to proceed in this action on August 23, 2004. On September 17, 2004, defendants filed an answer to plaintiff's complaint in which they raise various affirmative defenses and demand a trial by jury. Now plaintiff has filed a document dated September 28, 2004, titled "Plaintiff's Response to Defendants' Answer and Affirmative Defenses with a Jury Demand and Evidence." In this document, plaintiff replies to factual statements made in defendants' answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court

directs a reply to be filed. I have not made such an order in this case and do not intend to do so. Under Fed. R. Civ. P. 12(b), a defendant is free to move to dismiss a complaint on various grounds described in the rule. Sometimes, the motion to dismiss is grounded on the same claims that were made initially as affirmative defenses in the answer. If defendants in this case were to file such a motion, the clerk of court would schedule the motion for briefing and plaintiff would be given an opportunity to oppose it. However, it is not this court's practice to treat a defendant's affirmative defenses in the answer as a motion requiring briefing. Fed. R. Civ. P. 8(d) provides that averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file

but will not be considered.

Entered this 5th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge