

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

KENNETH VALENTINE AWE,

Plaintiff,

v.

KEITH GOVIER, Grant County Sheriff,

Defendant.

ORDER

06-C-162-C

Plaintiff Kenneth Awe has filed notice of a change in his address and a document that appears to be a reply to the answer and counterclaim defendant Govier filed in response to plaintiff's complaint. As an initial matter, it appears that because of plaintiff's recent address change, he may not have received this court's order of June 19, 2006, dismissing defendant's counterclaim for medical expenses owed by petitioner for lack of subject matter jurisdiction. Therefore, I am enclosing another copy of that order to plaintiff with a copy of this order.

With respect to plaintiff's response to defendant's answer, however, the submission cannot be considered. Fed. R. Civ. P. 12(b) permits a defendant raise affirmative defenses in his answer. However, such defenses do not trigger court action unless they are raised in a motion to dismiss. If defendant were to file such a motion, plaintiff would be allowed to

respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, 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. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides 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 28th day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge