

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

K. ANDREA B. BRIARMOON,

Plaintiff,

v.

MUNICIPALITY OF JANESVILLE,

Defendant.

PRELIMINARY PRE-TRIAL
CONFERENCE ORDER
AND INJUNCTIVE ORDER

06-C-246-S

Motion and order for emergency temporary restraining order and injunctive relief and preliminary pre-trial conference came on to be heard in the above entitled matter on June 16, 2006, the plaintiff having appeared personally; defendant by Stafford Rosenbaum by Ted Waskowski. Honorable John C. Shabaz, District Judge, presided.

ORDER

IT IS ORDERED that all dispositive motions to be filed during the pendency of this matter, to include motions for summary judgment, shall be accompanied by memoranda of law; opposing party being given 20 days to respond; and the moving party 10 days to reply.

IT IS FURTHER ORDERED that all motions for summary judgment and other dispositive motions shall be served and filed not later than August 15, 2006; motions for summary judgment in accordance with local rule, a copy of which is enclosed.

IT IS FURTHER ORDERED that nondispositive motions, to include procedural motions, may be heard upon five days notice on any Wednesday morning by telephone at 8:00 A.M. or earlier, moving party to initiate the telephone conference to 608-264-5504.

IT IS FURTHER ORDERED that discovery shall be completed and all depositions taken not later than September 29, 2006.

IT IS FURTHER ORDERED that the following discovery materials will not be filed with the Court unless they concern a motion or other matter under consideration by the Court: interrogatories; responses to interrogatories; requests for documents; responses to requests for documents; requests for admission; and responses to requests for admission.

IT IS FURTHER ORDERED that final pre-trial conference is scheduled for October 4, 2006 at 1:15 P.M., pursuant to the provisions of Order Prior to Final Pre-trial Conference, a copy of which is also enclosed.

IT IS FURTHER ORDERED that jury selection and bifurcated trial to a seven-person jury, where the issue of liability is to be determined prior to the determination of any damage, are scheduled for October 16, 2006 at 9:00 A.M., counsel to meet with the Court at 8:30 A.M. on said day to discuss voir dire and other issues related to trial.

For plaintiff to prevail on her motion for a preliminary injunction, she must establish: 1) that she has no adequate remedy at law; 2) that she will suffer irreparable harm if a preliminary injunction is not issued; 3) that the harm she will suffer if the order is not granted would be greater than the harm defendant will suffer if the order is granted; 4) that she has a reasonable likelihood of success on the merits; and 5) that the injunction will not harm the public interest. See Platinum Home Mortgage Corp. v. Platinum Fin. Group, Inc., 149 F.3d 722, 726 (7th Cir. 1998).

The Court determines that plaintiff has a less than negligible likelihood of success on the merits because her claim is barred by claim preclusion. Accordingly,

IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction is DENIED.

Entered this 16th day of June, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge

**Procedure to be followed on Motions for Summary Judgment
in cases involving pro se litigants**

Instructions - Read Carefully

- I. A motion for summary judgment made pursuant to Rule 56, Federal Rules of Civil Procedure, shall be served and filed in the following form:
- A. The motion itself, together with any materials permitted by Rule 56(e).
 - B. A statement of proposed findings of fact. The statement should include those factual propositions necessary to judgment in movant's favor and to which there is no genuine issue. Such factual propositions shall be set forth in numbered paragraphs, each referring to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS¹ supporting movant's contention that there is no genuine issue as to that factual proposition.

Such references to the record shall include the numbered paragraph of any PLEADINGS, the name of the witness and the page of the transcript of any DEPOSITION, the number of an ANSWER to INTERROGATORY and the identity of the party to whom it was directed, or the number of the requested ADMISSION and the identity of the party to whom it was directed.
 - C. A statement of proposed conclusions of law, in numbered paragraphs.
 - D. A brief in support of the motion.
- II. RESPONSE: On or before 20 days after service of the motion or unless otherwise ordered, any party opposing the motion shall serve and file the following:
- A. Any materials permitted by Rule 56(e).
 - B. A response to the movant's statement of proposed findings of fact. This response shall state clearly whether there is a genuine issue as to the whole or part of each numbered paragraph of the movant's proposed findings of fact, and if only as to a part, the response shall identify precisely that part. The response shall refer to the PLEADINGS, DEPOSITION TRANSCRIPTS, ANSWERS TO INTERROGATORIES, ADMISSIONS on file or AFFIDAVITS complying with

¹ Affidavits must be made on personal knowledge, set forth facts that would be admissible in evidence and show that the affiant is competent to testify to the matters stated therein.

Rule 56(e), which respondent believes give rise to the genuine issue. References to the record shall have specificity required by I.B. above. If an opposing party believes that the motion for summary judgment must fail because of material facts not stated by the movant and as to which there is no genuine issue, the opposing party may state these other factual propositions, using the format set forth in I.B. above.

- C. A response to the movant's statement of proposed conclusions of law. The response shall state clearly whether each numbered proposed conclusion is agreed to or disputed in whole or in part, and if only in part, which portion is disputed. If an opposing party believes that the motion for summary judgment must fail because of conclusions of law not stated by movant, that party may state those other conclusions of law.
 - D. A brief in opposition to the motion.
- III. REPLY: On or before 10 days after service of the response or unless otherwise ordered, the movant may serve and file in reply any or all of the following items:
- A. Any materials permitted by Rule 56(e).
 - B. A statement in reply to any response to movant's proposed findings of fact and in reply to any findings of fact proposed in the response, each with that specificity required by I.B. above.
 - C. A statement in reply to any response to movant's proposed conclusions of law, and a statement in reply to any numbered conclusions of law proposed in the response.
 - D. A reply brief.
- IV. In deciding the motion for summary judgment, THE COURT WILL FIND NO GENUINE ISSUE AS TO ANY PROPOSED FINDING OF FACT UNLESS AN OPPOSING PARTY ASSERTS, BY REFERENCE TO EVIDENCE IN THE MANNER DESCRIBED ABOVE, THAT SUCH AN ISSUE EXISTS. THE COURT IS UNDER NO OBLIGATION TO SEARCH THE RECORD FOR FACTUAL MATTERS SUPPORTING EITHER THE GRANTING OR DENIAL OF THE MOTION.
- V. All motions for summary judgment shall be decided without oral argument, unless the Court otherwise directs.

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

PROCEDURE FOR MARKING EXHIBITS IN
CASES INVOLVING PRO SE LITIGANTS

All exhibits that may be offered at trial shall be prepared before commencement of trial.

Questions concerning these instructions may be directed to the clerk's office, 608-264-5156.

1. All exhibits are to be labeled with labels, three of which are enclosed, any additional labels are to be obtained from the clerk's office on day of trial.
2. Each exhibit shall be listed on the enclosed yellow exhibit sheet. The list should state to whom each exhibit belongs, its number, and a brief description. See attached sample.
3. Plaintiff(s) shall use exhibit numbers starting with 1. Defendant(s) shall begin numbering with 101.
4. A copy of the exhibit list and a copy of each of the exhibits that may be offered must be provided for the opposing party. The originals will be given to the clerk. An additional copy of the exhibit list and exhibits may be provided for the judge's use.
5. Once reference is made to an exhibit at trial, the exhibit becomes part of the record and custody is transferred to the clerk, even though the exhibit might not be formally offered or received.

Theresa M. Owens
Clerk of Court

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

JUDGE JOHN C. SHABAZ
ORDER PRIOR TO FINAL PRE-TRIAL CONFERENCE

IT IS ORDERED that in preparation for trial counsel for the parties shall:

1. Confer not later than ten days before the date of the final pre-trial conference scheduled in the action to which this order refers.
2. Prepare a joint final pre-trial report to be filed with the Court not later than three days before the final pre-trial conference. The principal burden for the composition of the report shall be on counsel for the plaintiff. The report must be signed by counsel for all parties and must contain the following:
 - (a) Date of the pre-trial conference and appearances for the parties.
 - (b) An agreed statement of all uncontested facts. In the absence of objection to the admissibility of any uncontested facts the statement will become part of the record. No proof will be received at trial on the matters covered by the statement.
 - (c) An agreed statement of major factual issues.
 - (d) The names and addresses of all prospective witnesses for each party. It is contemplated that witnesses not listed will not be permitted to be called except upon a showing of good cause.
 - (e) The names and addresses of all prospective expert witnesses for each party, together with a narrative statement of each expert's background and experience. If the case is to be tried to a jury, the statement will be read to them and no proof will be received on the matters covered unless objection to the narrative statement is noted in the report.
 - (f) An itemized statement of special damages if such special damages are an element of a claim.
 - (g) A schedule of all exhibits to be offered at trial, designating those to which objection will be made, with a brief statement as to the grounds for objection. Objections based on relevancy need not be noted.
 - (h) A list of depositions, or portions thereof, to be offered at trial. Extensive (i.e. more than 5 pages) reading from depositions will not be permitted. Rather, the proponent of a deposition must prepare a written narrative summary of a

deposition the party intends to offer. Any other parties desiring to make use of the same deposition must also prepare a narrative summary. Summaries not filed at least ten days prior to trial (seven days for a responsive summary) may not be used during the trial absent a showing of good cause.

3. Mark and number all exhibits prior to the final pre-trial conference. Exhibits should be numbered serially without designating the offering party; plaintiffs to begin numbering with 1, defendants with 201.
 - (a) File all formal discovery documents, to include depositions and contested exhibits at final pre-trial conference.

4. **If trial to the Court, as follows:**

Counsel for parties will submit to the Court by noon of the Thursday before trial the following:

- (a) Trial briefs on all contentions of parties filing the brief, including references to special evidentiary problems.
- (b) Proposed findings of fact, conclusions of law and order of judgment.

If trial by jury, as follows:

Counsel for parties will submit to the Court not later than noon ten days before trial or as otherwise directed the following:

- (a) Trial briefs on all contentions of parties filing the brief, including references to special evidentiary problems.
 - (b) Proposed voir dire questions.
 - (c) Proposed jury instructions, with citations or references of authority; instruction conference to be held the Friday prior to trial.
 - (d) Proposed verdict forms, special verdict forms and proposed special interrogatories to jury, if applicable.
 - (e) Instruction conference to be held the Friday prior to trial.
5. Submit separate reports or partial separate reports at time of final pre-trial conference if counsel cannot agree on the contents of a joint report, and certify that after making diligent effort agreement could not be reached on joint report.

6. The following paragraph shall be included in each pre-trial order:

Hereafter this order will control the course of the trial and may not be amended except by consent of the parties and the Court to prevent

manifest injustice. In the event of ambiguity in any provisions of this order, references may be made to the records of this conference to the extent recorded by notes and to the pleadings.

7. Estimated trial time and other items which may be pertinent thereto.