

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

RAYMOND BRESETTE, #217468,

Plaintiff,

v.

OFFICER STEVE KNUDSEN,
SHERIFF ROBERT FOLLIS and
LARRY WEBER,

Defendants.

ORDER

06-C-280-C

Defendants have moved to amend their answer in this case on the ground that “the substantial factual evidence as developed through investigation by defendants’ counsel and as submitted to the court in support of defendants’ motion for summary judgment is inconsistent with the answers filed by defendants insofar as some of the plaintiff’s allegations are admitted.” It is apparent that when plaintiff used defendants’ admissions to dispute certain of defendants’ proposed findings of fact in support of their motion for summary judgment, defendants discovered that their original answer to plaintiff’s amended complaint (the current operative pleading) contained admissions inconsistent with the evidence that has been uncovered during the course of these proceedings.

A trial court is permitted to grant a motion to amend the pleadings so that evidence

can be introduced and the merits of an action heard, so long as the opposing party is not prejudiced by the late amendment. Moncrief v. Williston Basin Interstate Pipeline Co., 174 F.3d 1150, 1160 (10th Cir. 1999); New York State Elec. & Gas Corp. v. Secretary of Labor, 88 F.3d 98, 104-105 (2d Cir. 1996). In this case, it appears that defendants did not discover the errors in their answer until after plaintiff filed his response to their proposed findings of fact. Plaintiff based his dispute to defendants' proposed findings of fact nos. 23, 24 and 26 on defendants' admissions to the allegations plaintiff made in paragraphs 6 and 8 of his amended complaint. Although allowing defendants to amend their admissions will inconvenience plaintiff, by necessitating the filing of a new response, I do not think the inconvenience will prejudice him unfairly. Plaintiff will be given an enlargement of time in which to respond to defendants' proposed findings of fact 23, 24 and 26.

ORDER

IT IS ORDERED that defendants' motion to amend its answer to plaintiff's amended complaint is GRANTED. The amended answer is accepted as the operative answer in this case as of this date.

Further, IT IS ORDERED that plaintiff may have until December 21, 2006, in which to file a supplemental response to defendants' proposed findings of fact 23, 24 and 26.

Defendants may have until December 28, 2006, in which to serve and file a reply to plaintiff's supplemental response.

Entered this 7th day of December, 2006.

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