

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

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ROBERTO F. COLORADO,

Plaintiff,

v.

PLATTEVILLE POLICE DEPARTMENT  
and JEFFREY M. HAAS,

Defendants.  
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OPINION AND ORDER

07-cv-486-bbc

This is a civil action in which plaintiff Roberto F. Colorado contends (1) that defendant Jeffrey M. Haas violated plaintiff's Fourth Amendment right when he used excessive force in arresting plaintiff on August 9, 2004 and (2) that defendant Platteville Police Department negligently supervised and trained defendant Haas. Jurisdiction is present. 42 U.S.C. § 1331.

This matter is before the court on defendants' unopposed motion for summary judgment. Defendants contend that because plaintiff is a fugitive from justice, they are entitled to judgment because of plaintiff's fugitive status and because he has failed to prosecute his case. I conclude that under the fugitive disentitlement doctrine this case

should be dismissed; I will grant defendants' motion for summary judgment.

The following undisputed facts are gathered from defendants' unopposed proposed findings of fact.

## UNDISPUTED FACTS

### A. Parties

At all times material to this lawsuit, plaintiff Robert Colorado was a resident of the state of Wisconsin. Defendant Jeffrey Haas is a police officer with the City of Platteville Police Department and at all times material to this lawsuit was a member of the Platteville Police Department Tactical Response Team. Defendant Platteville Police Department is a law enforcement agency in Platteville, Wisconsin.

### B. Plaintiff's Fugitive Status

On August 8, 2004, defendant Haas, other officers from the Tactical Response Team and officers from the Grant County Crisis Resolution Team executed a search and arrest warrant at a duplex in Platteville, Wisconsin. Plaintiff was arrested at the duplex. Subsequently, he was convicted of the following three felonies: substantial battery-intended bodily harm, in violation of Wis. Stat. § 940.19(2); second degree recklessly endangering safety, in violation of Wis. Stat. § 941.30(2); and failing to comply with an officer taking

a person into custody, in violation of Wis. Stat. § 946.415(2). Plaintiff was sentenced to a period of confinement to be followed by five years' extended supervision.

On February 6, 2007, plaintiff was released from the Prairie du Chien Correctional Facility. Agent Tari Trapp was assigned to supervise plaintiff during his extended supervision. On September 7, 2007, Trapp was informed that plaintiff had been involved in assaultive conduct. Because such conduct is a violation of plaintiff's extended supervision, Trapp issued an Apprehension Request for plaintiff on the same day she was informed of the conduct. As of February 22, 2008, the Apprehension Request for plaintiff was valid and he had not been taken into custody.

On October 7, 2007, Grant County Circuit Judge George S. Curry issued a warrant for plaintiff's arrest on charges of first degree reckless injury, repeater, in violation of Wis. Stat. §§ 940.23 and 939.62(1)(c). On October 28, 2007, Judge Curry issued a Warrant of Commitment for plaintiff's failure to pay child support. On January 14, 2008, Lafayette County Reserve Judge David Deininger issued a warrant for plaintiff's arrest on charges of battery, repeater, in violation of Wis. Stat. §§ 940.19(1) and 939.62(1)(a).

### C. Plaintiff's Failure to Prosecute

On November 1 and 9, 2007, defendants sent plaintiff's lawyer authorizations for access to plaintiff's medical and psychological records for use in this case. On December 12,

2007, plaintiff's lawyer informed defendants' lawyer that she had sent the authorizations to plaintiff, but that she had not received a response from him. On January 10, 2008, defendants served plaintiff's lawyer with an Amended Notice of Deposition to schedule plaintiff's deposition for January 23, 2008, at 9:00 a.m. in the courthouse for the Western District of Wisconsin. Both plaintiff's lawyer and defendants' lawyer were present for plaintiff's scheduled deposition, but plaintiff did not appear. Plaintiff's lawyer stated that she did not know where plaintiff was and that she had not spoken to him since early October 2007. Plaintiff's lawyer has sent plaintiff several letters and had conversations with members of plaintiff's family, but she has not received any response from plaintiff.

#### OPINION

Defendants contend that this case should be dismissed under the fugitive disentitlement doctrine. "The fugitive disentitlement doctrine is a discretionary device by which courts may dismiss criminal appeals or civil actions by or against individuals who are fugitives from justice." Gutierrez-Almazan v. Gonzales, 453 F.3d 956, 957 (7th Cir. 2006) (citing Sarlund v. Anderson, 205 F.3d 973, 974 (7th Cir. 2000)). Because the doctrine is discretionary, it "does not automatically disqualify a fugitive from justice from maintaining an action in federal court." Sarlund, 205 F.3d at 974. The doctrine is viewed as "an equitable one [that] rests upon the power of the courts to administer the federal courts

system.” Pesin v. Rodriguez, 244 F.3d 1250, 1252-53 (11th Cir. 2001) (citing Ortega-Rodriguez v. Unites States, 507 U.S. 234, 244 (1993)).

In applying the doctrine a court should be guided by pragmatic considerations. Gutierrez-Almazan, 453 F.3d at 957 (citing Degen v. United States, 517 U.S. 820 (1996)). The core consideration is whether a party’s actions have made enforcement of an adverse judgment impossible. Gutierrez-Almazan, 453 F.3d at 957. For example, in Sarlund, 205 F.3d at 975, application of the doctrine by the Court of Appeals for the Seventh Circuit led to dismissal of the plaintiff’s 42 U.S.C. § 1983 suit because “[his] fugitive status place[d] him entirely beyond judicial control, thus creating a situation severely prejudicial to his adversaries[,]” that is, “he [could not] be deposed by defendants or made to pay costs (should he lose) or attorneys’ fees.” In Sarlund the court went on to note that dismissal of the case was the only way to prevent the plaintiff from using the litigation process “to harass the defendants with impunity.” Id.

Currently there are three outstanding warrants as well as an apprehension request for plaintiff; therefore, plaintiff is a fugitive from justice. Plaintiff’s lawyer has not communicated with plaintiff since early October 2007; plaintiff failed to show up for a scheduled deposition; and plaintiff did not even file a response to defendants’ summary judgment motion. Plaintiff’s status as a fugitive from justice has placed him entirely beyond judicial control and created a situation that is severely prejudicial to defendants. Plaintiff

cannot be deposed or provide the medical authorization necessary to allow defendants to effectively investigate his claim that defendant Haas used excessive force in arresting him.

Moreover, plaintiff's fugitive status makes enforcement of an adverse judgment against him impossible: if defendants were to win on the merits of this lawsuit, plaintiff would avoid payment of costs or attorneys' fees because his whereabouts are unknown. Additionally, permitting plaintiff to continue this lawsuit while he is a fugitive would permit him to reap the benefits of a judicial system the orders of which he has continued to disrespect by avoiding custody. See, e.g., Pesin, 244 F.3d at 1253. Accordingly, plaintiff's fugitive status has disintitiled him from using this court to determine his claims.

Plaintiff's fugitive status demonstrates disrespect for the judicial system and causes defendants severe prejudice. Therefore, in accordance with the fugitive disintitlement doctrine I will grant defendants' summary judgment motion and dismiss plaintiff's lawsuit with prejudice.

ORDER

IT IS ORDERED that the summary judgment motion (dkt. #11) filed by defendants Platteville Police Department and Jeffrey M. Haas is GRANTED. This case is DISMISSED with prejudice under the fugitive disentitlement doctrine. The clerk of court is directed to enter judgment in defendants' favor and close this case.

Entered this 21st day of April, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge