

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

JOHN L. ALLEN,

Plaintiff,

v.

GLEN HEINZL and
JILL HANSON,

Defendants.

ORDER

08-cv-037-bbc

On October 14, 2008, plaintiff moved for an enlargement of time within which to serve and file a reply to defendants' response to his motion for summary judgment (Dkt. #39). In preparing to decide that motion, it has come to the court's attention that another motion filed by plaintiff on September 22, 2008, remains pending on the court's docket. That motion is titled "Motion of Adding Affidavit that was Left Out of Summary Judgment" (Dkt. #32), and is accompanied by an affidavit from plaintiff in which he attests to the authenticity of numerous exhibits he attached to an affidavit he filed at the time he moved for summary judgment. It should have been granted promptly, so that defendants could have properly assessed the admissibility of the evidence plaintiff cited in support of his proposed findings of fact when they filed their response. Instead, without knowing the court

would grant plaintiff's motion, defendants filed their response to plaintiff's proposed findings of fact on October 3, 2008, asserting in several instances that the court should disregard plaintiff's proposed fact on the ground that he "fail[ed] to cite to any admissible evidence to support his assertion."

Perhaps defendants would have responded precisely as they did, even with the addition to the record of plaintiff's affidavit authenticating documentary evidence he submitted in support of his motion for summary judgment. However, without combing plaintiff's proposed facts and defendants' responses to them meticulously, I cannot be sure that the failure of the court to address plaintiff's September 22, 2008 motion before defendants filed their response led defendants to respond to plaintiff's proposed findings of fact differently than they would have had the motion been granted before they prepared their response. Therefore, I am extending the schedule for briefing plaintiff's motion for summary judgment to allow defendants an opportunity to review their responses to plaintiff's proposed findings of fact and either submit a revised response or advise the court and plaintiff that they intend to stand on the response they filed on October 3, 2008. Plaintiff's deadline for responding to defendants' revised response or the response they have already filed, assuming they stand on that response, will be extended accordingly. No undue delay in the progress of this suit will be experienced as a result of this extended schedule, because plaintiff's motion was filed well in advance of the November 7, 2008 dispositive

motions deadline set in the preliminary pretrial conference order entered in this case on May 2, 2008.

ORDER

IT IS ORDERED that

1. Plaintiff's "Motion of Adding Affidavit that was Left Out of Summary Judgment" (Dkt. #32) is GRANTED. Plaintiff's affidavit authenticating documents he filed in support of his motion for summary judgment will be considered in determining the authenticity of documents referenced in plaintiff's proposed findings of fact.

2. Defendants may have until October 30, 2008, in which to serve and file a revised response to plaintiff's proposed findings of fact or advise the court and plaintiff that they intend to stand on the response they have already filed.

3. Plaintiff may have until November 13, 2008, in which to serve and file a reply to defendants' response to his motion for summary judgment.

4. Plaintiff's motion for an enlargement of time to file a reply to defendants' response

to his motion for summary judgment (Dkt. #39) is DENIED as moot.

Entered this 17th day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge