

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

JAMES R. SCHULTZ,

Plaintiff,

v.

ERIC JOHNSON, JOHN SEVERSON,
KENNETH MILBECK and BRADLEY HOOVER,

Defendants.

ORDER

10-cv-581-bbc

Pro se plaintiff James Schultz is proceeding on two claims in this prisoner civil rights case: (1) defendants Eric Johnson and John Severson used excessive force against him, in violation of the Eighth Amendment; and (2) defendants Kenneth Milbeck and Bradley Hoover punished him because of his involvement with Piety Global International, Inc. and because he possessed information critical of prison officials, in violation of the First Amendment.

The parties currently are briefing defendants' summary judgment motion. Plaintiff's response materials were due August 31, 2011. Instead of filing these materials, plaintiff filed two motions for an extension of time and a motion to supplement discovery, stating that defendants failed to provide an adequate response to his discovery request seeking the names and address of prison nurses who tended to plaintiff following his back surgery and who plaintiff claims will substantiate his excessive force claim. He has also filed a motion for appointment of counsel and a document titled "motion for letter of advisement."

Plaintiff correctly points out that defendants made a mistake when responding to his discovery request: materials submitted by plaintiff show that he submitted his request for the names and address of the prison nurses along with requests about the medical personnel and other people who witnessed his back surgery at the University of Wisconsin Hospital. Defendants objected to the requests for information regarding the surgery because defendants do not have access to the names of hospital staff. They did not respond directly to plaintiff's request regarding

the *prison* nurses, presumably because they missed the distinction in providing one blanket response to all of plaintiff's requests.

Despite this mistake,, I will deny plaintiff's motions. Plaintiff has waited far too long to object to defendants' response. Plaintiff has handwritten a note on the copy of defendants' discovery response attached to his motion, stating that the response was dated April 11, 2011, yet he provides no explanation for why he waited four months to bring this matter to the court's attention. Moreover, it appears that plaintiff might know the names of two of the nurses—he provides the names “D. Beyer?” and “B. Beaudette?,” indicating that he had a lead on these nurses names, but he provides no evidence suggesting that he attempted to track them down himself, even though they work at the prison where plaintiff is incarcerated. In short, I cannot grant plaintiff's last-minute request because it would delay the case weeks, if not months, while plaintiff worked to gather testimony that he could have and should have been pursuing more diligently months ago.

Although I am denying plaintiff's motions for an extension of time to pursue further discovery, nonetheless I will grant a short extension of his summary judgment response deadline so that he can submit a response. He will have until September 28, 2011 to submit his materials opposing the motion for summary judgment. Defendants' reply is due October 10, 2011.

Turning to plaintiff's motion for appointment of counsel, plaintiff again raises the argument that his ability to prosecute the lawsuit is impeded by prison staff monitoring his mail. Judge Barbara Crabb has already rejected this argument in the August 11, 2011 order denying plaintiff's motion “for a cease and desist order.” Dkt. 86. Plaintiff argues also that the case is too complex and that he has a memory problem that will impair his ability to litigate the case. At this point I am not convinced that this is one of the relatively few cases in which this court should appoint counsel. At this stage of the proceedings, plaintiff's relatively straightforward task is to

take the evidence he has gathered and present it in his materials opposing defendants' motion for summary judgment. Should plaintiff survive summary judgment, he is free to renew his motion.

Finally, plaintiff has filed a document titled "motion for letter of advisement" in which he asks several questions about this litigation. Although the document is styled as a motion it is really a letter, and most of plaintiff's questions are addressed or mooted by the discussion above. One of plaintiff's lingering questions is whether he can reinstate portions of his original request for relief that he omitted in his amended complaint, but this isn't a problem because examination of these pleadings shows that plaintiff did not leave anything out in his amended complaint. He also asks how he can preserve an issue for appeal, and the answer is simple: he should raise that issue in this court, preferably along with his materials in opposition to defendants' motion for summary judgment.

ORDER

It is ORDERED that:

- (1) Plaintiff's motions for an extension of time and motion to supplement discovery, dkt. 90, 92, 96, are DENIED.
- (2) Plaintiff will have until September 28, 2011 to submit his materials opposing defendants' motion for summary judgment. Defendants' reply is due October 11, 2011.
- (3) Plaintiff's motion for appointment of counsel, dkt. #86, is DENIED WITHOUT PREJUDICE.

Entered this 14th day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge