

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

JAMES R. SCHULTZ,

Plaintiff,

v.

ERIC JOHNSON, *et al.*,

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 motions for an extension of time and 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 would substantiate his excessive force claim. In a September 14, 2011 order, I denied plaintiff's motion, stating that although he correctly pointed out that defendants made a mistake by failing to provide these identities, plaintiff waited far too long to raise this point; defendants' discovery response was dated April 11, 2011, yet plaintiff waited until August 22, 2011 nine days before his summary judgment response materials were due, to file this motion.

Now plaintiff has filed two new motions: (1) a motion to supplement his amended complaint to reinstate his claim for money damages; and (2) a motion for reconsideration of the portion of the September 14, 2011 order denying his motions to supplement discovery and extend the briefing deadlines on defendants' motion for summary judgment.

With regard to the motion to supplement his amended complaint, I have previously explained to plaintiff that there is no problem with his amended complaint; it contains the same requests for relief that is present in his original complaint. Therefore that motion will be denied.

I will also deny plaintiff's motion for reconsideration. Plaintiff states that he "doesn't understand how a delay would affect the procedure. So what if a civil suit is delayed a little while longer. Plaintiff didn't file this action in this court—the defendants did." True, defendants removed this case to federal court, but it is plaintiff who initiated this lawsuit litigation by filing a civil complaint in state court on August 27, 2010. It was—and is—his obligation to prosecute his case diligently. Pursuant to F.R.Civ. Pro. 1, the defendants are entitled to the just, speedy and inexpensive resolution of this lawsuit. (So is plaintiff, but he doesn't seem concerned about the "speedy" part).

The December 17, 2010 Preliminary Pretrial Conference Order warned plaintiff that he would not get more time to file a response to a summary judgment motion "if you waited too long to get all the information you think you need to respond to the motion," dkt. 24 at 7, and that "if the parties do not bring discovery problems to the court's attention quickly, then they cannot complain that they ran out of time to get information that they needed for summary judgment or for trial," *id.* at 9-10. In other words, plaintiff cannot seek an extension at the last minute based on facts known or knowable to him months earlier. Plaintiff will have to oppose

defendants' summary judgment motion with the evidence he has acquired thus far. I will grant him a short extension of time to do so: he will have until October 18, 2011 to submit his opposition materials, and defendants' reply is due November 1, 2011.

ORDER

It is ORDERED that:

- (1) Plaintiff's motion to supplement his amended complaint, dkt. 102, is DENIED.
- (2) Plaintiff's motion for reconsideration of the court's September 14, 2011 ruling denying his motions for an extension of time and motion to supplement discovery, dkt. 104, is DENIED.
- (3) Plaintiff's will have until October 18, 2011 to submit his materials opposing defendants' motion for summary judgment. Defendants' reply is due November 1, 2011.

Entered this 4th day of October, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge