

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

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ONTARIO A. DAVIS,

Plaintiff,

v.

BARBARA DELAP, SGT. NOVINSKA,
NURSE JANE DOE and
PETER HUIBREGTSE,

Defendants.

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ORDER

10-cv-674-slc¹

In an order dated January 13, 2011, I granted plaintiff leave to proceed on his claims that defendants Peter Huibregtse, Sgt. Novinksa, Barbara Delap and Nurse Jane Doe violated his rights under the Eighth Amendment by failing to provide him proper medical and dental treatment. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, the order was sent on January 13 to the attorney general for service on the state defendants. Under the agreement, the Department of Justice had 40 days from the date of the Notice of Electronic Filing of the order to answer or

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

otherwise plead to plaintiff's complaint for the defendants on whose behalf it accepted service. In the interim, plaintiff filed a motion for reconsideration of the court's January 13 order. I denied the motion on February 10.

Defendants did not file an answer until March 15, 2011, approximately three weeks past their deadline. Because defendants' answer was untimely, plaintiff has moved to strike the answer and enter default against defendants, dkt. #17.

I am denying plaintiff's motion. Default is appropriate only when the party against who judgment is sought "failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). Additionally, entry of default is a drastic measure that courts should impose only "in extreme situations where less drastic measures have proven unavailing." Silva v. City of Madison, 69 F.3d 1368, 1377 (7th Cir. 1995). In this case, defendants acknowledge that their answer was filed late, explaining that their counsel mistakenly calculated that the 40-day deadline should run from the time plaintiff's motion for reconsideration was denied.

Defendants should have been more conscientious about keeping track of deadlines. However, defendants have now appeared, pleaded and plan to defend themselves against plaintiff's claims. Moreover, a three-week delay this early in the case that caused plaintiff no apparent prejudice is not an extreme situation. Entry of default would be inappropriate.

ORDER

Plaintiff Ontario Davis's motion for strike defendants' answer and enter default, dkt.
#17, is DENIED.

Entered this 15th day of April, 2011.

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