

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

EDWARD HEUER,

Plaintiff,

v.

STEVEN TETZLAFF,

Defendant.

ORDER

11-cv-302-slc

Plaintiff Edward Heuer is proceeding on a claim that defendant Steven Tetzlaff, a correctional officer at the Fox Lake Correctional Institution, used excessive force against Heuer on June 17, 2010, while Heuer was an inmate at the institution. (Heuer has since been released from prison and now resides in Hebron, Illinois.) Before the court is Heuer's second motion for appointment of counsel. Dkt. 24. Also pending is Tetzlaff's motion for summary judgment; Heur's response is due on July 20, 2012.

Before addressing Heuer's request for counsel, a few remarks are necessary about his responses to defendant's summary judgment motion. Dkts. 28, 29. On the one hand, Heuer's submissions show that he is capable of preparing typewritten, legible submissions, that he understands defendant's arguments and that he can present his thoughts articulately. On the other hand, Heuer failed to comply with this court's *Procedure to be Followed on Motions for Summary Judgment*, a copy of which was attached to the preliminary pretrial order that was mailed to him. Dkt. 9. Specifically, with respect to disputed facts, in many instances Heuer simply responded "false" and failed to state his version of the fact. Further, even when he did state his version of a fact, he failed to cite to any evidence that supports his version. This is not a proper response to a proposed fact. *See Procedure*, Section II. D.

As explained in the summary judgment procedure, to dispute a proposed fact, a party must not only state his version of the fact but also must refer to evidence that supports his version. *Id.* The various types of evidence that can be used to support a proposed finding of fact or response thereto are listed in Section I.C. of the *Procedure*. When a party fails to cite admissible evidence to support his version of a fact, this court concludes that the movant's proposed fact is undisputed. *Procedure*, Section II. C.

It is plain from Heuer's response to defendant's motion that he disputes many of the facts proposed by defendant and that his dispute is based on his own recollection of the events underlying his excessive force claim. His responses, however, are not evidence; what he needs to submit is an affidavit or declaration setting out his version of the facts. I will give Heuer the benefit of the doubt and assume that his failure to submit an affidavit or declaration and to refer to it in his responses to defendant's proposed findings of fact was simply a misunderstanding of his obligations on summary judgment and not an intentional omission. Based on that assumption, I will give him the opportunity to cure his defective response to defendant's proposed findings of fact by submitting a new response, which includes citations to admissible evidence. As just noted, that evidence may consist of Heuer's own affidavit, but it may also include any other types of evidence that are identified in Section I.C of this court's *Procedure*. Plaintiff is advised to re-read this court's *Procedure to be Followed on Summary Judgment* before submitting his new response.

Plaintiff's deadline for submitting a new response to defendant's proposed findings of fact that complies with this court's *Procedure to be Followed on Summary Judgment* shall be July 27, 2012. Defendant's deadline for filing a reply shall be extended to August 10, 2012.

Against this backdrop, I turn to Heuer's motion for the appointment of counsel. Although Heuer has satisfied the prerequisite of showing that he has attempted unsuccessfully to obtain a lawyer on his own, I am nonetheless denying the motion. In considering such a motion, the court must assess both the complexity of the case and the pro se plaintiff's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). Plaintiff says that he is unable to represent himself because he is on home confinement and because he lacks legal skills and knowledge. As I have noted, however, plaintiff's response to the summary judgment motion shows that he is able to argue his position and respond logically to defendant's arguments. His other submissions in this case have been coherent and well-organized. He has access to a computer and a son who has been willing to help him with computer issues. *See* dkt. 25. Although plaintiff did not comply exactly with the court's summary judgment procedures, I am satisfied that he will be able to do so, given his demonstrated abilities and the instructions and extended deadlines I have just provided him.

As for the complexity of the case, nothing in the record suggests that this case is factually or legally difficult. Plaintiff has personal knowledge of the relevant events. The summary judgment motion appears to turn on whether this court agrees with defendant that even accepting Heuer's version of events, defendant's actions did not constitute excessive force, or if they did, that defendant is entitled to qualified immunity from liability. Answering these questions is largely a legal exercise that this court is well-equipped to perform even without the aid of counsel for Heuer. In doing so, I will apply the law as I think it ought to be applied, without regard to Heuer's pro se status. In sum, I am not persuaded that plaintiff's case is so complex or his skills and resources so inadequate that appointment of counsel is warranted at this time.

ORDER

IT IS ORDERED THAT:

1. Plaintiff Edward Heuer's motion for the appointment of counsel, dkt. 24, is DENIED.
2. Plaintiff may submit a new response to defendant's proposed findings of fact that complies with this court's *Procedure to be Followed on Summary Judgment*. Plaintiff's deadline for submitting this response is July 27, 2012. Defendant has until August 10, 2012, in which to file his reply.

Entered this 13th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

