

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

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LOREN L. LEISER, SR.,

Plaintiff,

v.

WILLIAM BRAUNSTEIN and  
JOHN SPENCER ARCHINIHU,

Defendants.<sup>1</sup>  
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ORDER

11-cv-328-bbc

This order addresses two pending motions: (1) plaintiff Loren Leiser's motion for a default judgment against defendant William Braunstein, dkt. #124; and (2) defendant Braunstein's motion for an extension of time to file an answer. Dkt. #146. For the reasons discussed below, I am denying plaintiff's motion and granting defendant's.

Plaintiff is suing defendant for an alleged failure to provide him appropriate medical care while plaintiff was housed at the Stanley Correctional Institution and defendant was providing medical services there as a contract physician. Plaintiff seeks a default judgment against defendant because defendant failed to file an answer to the complaint until more than one year after he was served.

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<sup>1</sup> Plaintiff's complaint identifies defendant William Braunstein as "Dr. Braunstein." I have amended the caption to reflect this defendant's full name, as identified in his recent filings.

In his response to plaintiff's motion, defendant says that he did not file an answer because he believed his employer would respond to the lawsuit. Dft.'s Decl. ¶ 6, dkt. #147. In addition, he says that he has not practiced medicine since 2010, has not been to the Stanley prison "since early 2008" and has never been sued before now. Id. at ¶¶ 2-5. When he did not receive any further communications about the case, he assumed that his employer had responded to it or the case had ended. Id. at ¶ 8. As soon as he received plaintiff's motion for default judgment, he contacted his former employer, obtained counsel and filed an answer.

In addressing the parties' motions, I begin with the "well established policy" for "favoring a trial on the merits over a default judgment." Sun v. Board of Trustees of University of Illinois, 473 F.3d 799, 811-12 (7th Cir. 2007). A court may enter a default judgment "only when a party wilfully disregards pending litigation." Id.

Defendant's failure to respond sooner may have been negligent, but he was not willfully disregarding the lawsuit. Accordingly, "this case does not represent one of those rare situations in which entry of default is appropriate." Id.

In his brief, plaintiff says that he will be "severely prejudiced" if defendant is allowed to file his answer now because of the cost of "relitigating" the case. Dkt. #157 at 2. However, he provides no specific information about any costs he will incur that he would not have incurred if defendant had filed a timely answer. If plaintiff prevails on his claim, he may be entitled to an award of costs under Fed. R. Civ. P. 54. If defendant prevails, his failure to make an appearance sooner may be a relevant factor in deciding whether cost-

shifting is appropriate.

ORDER

IT IS ORDERED that plaintiff Loren Leiser's motion for a default judgment, dkt. #124, is DENIED, and defendant William Braunstein's motion for an extension of time to file an answer, dkt. #146, is GRANTED. The clerk of court is directed to set a telephone conference before the magistrate judge to set a new schedule for the resolution of the case.

Entered this 28th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge