

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

SEAN ANTHONY RIKER,

Plaintiff,

v.

TAYLOR ANNE RIKER,

Defendant.

ORDER

12-cv-641-bbc

Plaintiff Sean Anthony Riker, an inmate at the Wisconsin Secure Program Facility, is proceeding pro se on a claim that defendant Taylor Anne Riker slandered him by falsely telling the police that he had downloaded child pornography on his computer. The Marshals Service served the complaint on defendant on November 27, 2012, and defendant had until December 18, 2012 to file an answer. On December 27, plaintiff moved for entry of default on the ground that defendant had failed to file an answer or responsive pleading, dkt. #26; the clerk of court entered default against defendant on January 28, 2013. Dkt. #29. On February 1, 2013, plaintiff filed a motion for default judgment under Fed. R. Civ. P. 55(b). Dkt. #30. On February 7, defendant, acting pro se, filed a letter with the court, denying the allegations in plaintiff's complaint and stating that she intends to defend herself against plaintiff's claims. Dkt. #32. She also asks that the court dismiss the case on the ground that plaintiff is using the legal process solely to harass her.

I am construing defendant's letter and other submissions as an answer to plaintiff's

complaint. Defendant has addressed plaintiff's allegations and raised defenses. In light of defendant's submissions, I am denying plaintiff's motion for default judgment and vacating the clerk's entry of default.

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). Additionally, there is a "well established policy" in this circuit 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). Thus, a court may enter a default judgment "only when a party wilfully disregards pending litigation." Id. Although defendant's answer to plaintiff's complaint is untimely, she has now responded and is not "wilfully disregard[ing]" the suit. Accordingly, "this case does not represent one of those rare situations in which entry of default is appropriate." Id.

In her letter to the court, defendant asks the court to dismiss plaintiff's claims on the ground that she never told the police or anyone else that plaintiff downloaded child pornography. If defendant believes she is entitled to judgment on plaintiff's claim on the ground that plaintiff cannot produce evidence that she committed defamation, she may file a motion for summary judgment supported by evidence showing that she never made the allegedly defamatory comments. The evidence may consist of defendant's own sworn statements denying plaintiff's allegations as well as statements from other witnesses with personal knowledge of relevant events. Both parties will learn more about motions for summary judgment and other court procedures at the preliminary pretrial conference, which

is the next step in this case.

The clerk of court will schedule a preliminary pretrial conference to be held before the magistrate judge in the near future. At the conference the magistrate judge will set a schedule for the case, explain court procedures to the parties and provide information about collecting evidence. He will also explain how the parties can attempt to resolve this case by filing motions for summary judgment before trial. The parties will have the opportunity to ask the magistrate judge any questions they have about the litigation process.

Defendant also asks the court to dismiss this case on the ground that plaintiff's lawsuit is part of an ongoing attempt by plaintiff to harass her. However, I cannot dismiss plaintiff's claims just because defendant has asked for the dismissal and has made allegations in support of her request. If it becomes clear later (either at summary judgment or at trial) that plaintiff's claims are premised on allegations he knew to be false and that he filed this case solely as a means to harass defendant, I can impose an appropriate sanction.

Finally, defendant wrote a note on the envelope she mailed to the court, asking that the court redact her address for privacy reasons. If defendant wishes to have her address redacted, she must file a formal request with the court justifying her request. Plaintiff is required by the Federal Rules of Civil Procedure to serve defendant every paper he files with the court, which means he needs to know defendant's address. Additionally, plaintiff needs defendant's address in order to conduct discovery and obtain evidence to prove his case. On the other hand, plaintiff should not be permitted access to defendant's address for the purpose of harassing her or for any other improper purpose. I will give defendant an

opportunity to explain why she believes plaintiff will use her address for an improper purpose. Until that time, both parties must file with the court two copies of every document they file in this case and the court will forward the documents to the opposing party.

ORDER

IT IS ORDERED that

1. The clerk of court's entry of default dated January 28, 2013, dkt. #29, is VACATED.

2. Plaintiff Sean Riker's motions for default judgment, dkt. ##26, 30, are DENIED.

3. The clerk of court is directed to schedule a preliminary pretrial conference with Magistrate Judge Crocker.

4. Defendant Taylor Riker has until February 21, 2013 to file a motion to keep her address private. Plaintiff may have until March 7, 2013 to respond. In the meantime, both parties must file with the court two copies of every paper they file in this case and the court will forward the papers to the opposing party.

Entered this 8th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge