

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

MUSTAFA-EL K.A. AJALA,
formerly known as DENNIS E. JONES-EL,

Plaintiff,

v.

CRAIG TOM and MATTHEW SCULLION,

Defendants.

ORDER

13-cv-102-bbc

Plaintiff Mustafa-El K.A. Ajala is proceeding on a claim that defendants Craig Tom and Matthew Scullion (both correctional officers) used excessive force in violation of the Eighth Amendment by placing him in painful restraints for several hours while he was being transported from the Green Bay Correctional Institution to the Wisconsin Secure Program Facility in 2007. On April 9, 2015, plaintiff filed a motion to renew his previously-filed motion for summary judgment. Dkt. #95. I had denied plaintiff's summary judgment motion as moot after I granted defendants' motion for summary judgment on exhaustion grounds. Dkt. #59. Now that defendants have withdrawn their exhaustion argument after the Court of Appeals for the Seventh Circuit directed this court to consider the issue further, plaintiff wishes to complete briefing on his summary judgment motion on the merits.

In response to that motion, defendants ask for an extension of time until September

28, 2015, to file opposition materials to plaintiff's summary judgment motion. Dkt. #99. I would not grant such a request in the absence of extraordinary circumstances and defendants have not shown that such circumstances exist. Particularly because I recently admonished plaintiff for seeking repeated extensions of time, dkt. #88, it would not be fair to turn around and allow defendants to set their own schedule.

Defendants do not suggest that plaintiff's summary judgment motion involves particularly complex legal or factual issues requiring such an extended response date. Instead, defendants give the following reasons for their request: (1) they are still conducting discovery; (2) defendants do not anticipate filing their own summary judgment motion until the deadline for doing so (which is September 28, 2015) and they would prefer the convenience of filing a combined motion and opposition brief at the same time; (3) there is an illness in lead counsel's family that may require her to be out of the office "in the next two weeks"; (4) the civil litigation unit at the Wisconsin Department of Justice is understaffed.

None of these reasons support a more than five-month extension of time. Although it is understandable that defendants would wish to conserve their own resources by filing all of their summary judgment materials at the same time, this does not mean that they are entitled to delay their response until the deadline for filing dispositive motions. This would convert what is meant to be the *last* day for filing such motions into the *only* day. With respect to understaffing, that might be a reason for a short extension in a specific case if counsel had many deadlines around the same time, but counsel do not suggest that their

schedule makes it impossible for them to file a response until the end of September. With respect to discovery, it makes sense that defendants would need some time to gather the necessary facts, but defendants do not suggest that they need to do anything more than prepare a few affidavits and collect a few records. Accordingly, in light of counsel's family concerns and need for discovery, I will give defendants a few weeks of additional time.

In closing, I would be remiss if I did not remind the parties that it is difficult for *either* side to obtain summary judgment in an excessive force case. Cyrus v. Town of Mukwonago, 624 F.3d 856, 862 (7th Cir. 2010) (“[W]e have recognized that summary judgment is often inappropriate in excessive-force cases because the evidence surrounding the officer's use of force is often susceptible of different interpretations.”). Thus, the parties may wish to consider whether it would be a better use of their time and resources for both sides to forgo any attempt at obtaining summary judgment and simply proceed directly to trial.

ORDER

IT IS ORDERED that defendants Craig Tom's and Matthew Scullion's motion for an extension of time, dkt. #99, is GRANTED IN PART. Defendants may have until June 15, 2015, to file a response to the motion for summary judgment filed by plaintiff Mustafa-El K.A. Ajala (formerly known as Dennis Jones-El). Plaintiff may have until June 25, 2015

to file a reply.

Entered this 20th day of April, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge