

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

JERRY LEE LEWIS,

Plaintiff,

v.

DANE ESSER, JUSTIN PEAK,
JASON GODFREY and JOHN DOE,

Defendants.

ORDER

14-cv-40-bbc

Pro se prisoner Jerry Lee Lewis is proceeding on claims that several correctional officers violated his Eighth Amendment rights by forcing him to walk in restraints that were too small for his body and using excessive force against him when he failed to comply with orders to stand and walk while wearing the restraints. Now before the court is plaintiff's motion to amend the scheduling order, dkt. #60, which I am denying as premature.

In his motion, plaintiff asks to extend the deadline for filing dispositive motions from February 13, 2015 to April 4, 2015. He says that he was delayed in conducting discovery by efforts to identify three John Doe defendants and he "anticipates that the Defendants will continue to dispute, object and contest the present discover[y] request[s] from plaintiff."

I am denying plaintiff's motion as premature. Plaintiff does not suggest that he has any intention of filing a motion for summary judgment, so he does not need an extension of time now. Rather, he says that he is worried that he will not have enough time to *respond*

to a motion for summary judgment that defendants may file. However, it is possible that defendants will not file a motion for summary judgment. If they do, plaintiff will have 30 days to file his response materials. Plaintiff says that he anticipates that he will need more time because defendants will object to his discovery requests, but I cannot grant plaintiff relief for something that has not occurred yet.

If defendants file a summary judgment motion and plaintiff can show *then* that he is unable to obtain the discovery he needs before the deadline for responding, he may file a motion under Fed. R. Civ. P. 56(d) for additional time. In that situation, plaintiff should explain:

- (1) what discovery materials he needs;
- (2) how that discovery is relevant to the issues raised in the motion for summary judgment;
- (3) why he needs additional time to get the discovery;
- (4) the steps he is taking to get the discovery; and
- (5) how much additional time he needs.

In the meantime, plaintiff should not waste any time in making any discovery requests that he believes he needs to prove his claims. The court will be more likely to grant a request for additional time if plaintiff can show that he did not unduly delay in seeking discovery.

ORDER

IT IS ORDERED that plaintiff Jerry Lee Lewis's motion for an extension of time, dkt. #60, is DENIED as premature.

Entered this 8th day of January, 2015.

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