

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

JERRY CHARLES,

Plaintiff,

v.

MATTHEW J. FRANK, JON LITSCHER,
and DICK VERHAGAN,

Defendants.

ORDER

02-C-0626-C

Plaintiff has filed a motion for reconsideration of this court's order of August 18, 2003. In that order, I denied plaintiff's motion for summary judgment because much of his supporting materials had to be disregarded for his failure to comply with the court's summary judgment procedures. In addition, I converted defendants' motion to dismiss to a motion for summary judgment and established a schedule for briefing that motion. In his motion for reconsideration, plaintiff appears to ask that the court either disregard the affidavit of Susan Clark that defendants submitted in support of their motion to dismiss or allow him an opportunity to respond to it.

Plaintiff is jumping the gun. I have not considered Susan Clark's affidavit or any of

the evidentiary materials defendants submitted with their motion to dismiss. When I converted defendants' motion to dismiss to a motion for summary judgment, I advised the parties that defendants would have until September 1, 2003, in which to serve and file proposed findings of fact and evidentiary materials in support of the motion and that plaintiff would have until September 22, 2003, in which to oppose to the motion. I advised the parties that in briefing the motion, they are to comply with this court's "Procedures to be Followed on Motions for Summary Judgment," a copy of which was sent to them earlier.

Defendants have not yet submitted proposed findings of fact and evidentiary materials in support of the motion for summary judgment. If defendants propose one or more facts that rely on Clark's affidavit for evidentiary support, plaintiff will have an opportunity to dispute the proposed fact, offer his version of the fact and provide evidentiary support for his version.

Also, plaintiff argues that I should reconsider the August 18 order insofar as it denied his motion for summary judgment for his failure to follow the court's summary judgment procedures. He suggests that the court should have looked at his motion when he first filed it and advised him of his mistakes so that he could correct his errors. He is wrong.

In a preliminary pretrial conference order dated March 27, 2003, the magistrate judge cautioned plaintiff:

Also, if you do not follow the court's [summary judgment] procedure . . . then

you will not get more time to do it over unless the court decides on its own that you should get a second chance.

The only way to make sure that the court will consider your documents is to start early, do them right the first time, and file them and serve them on time. If you do not do things the way it says in Rule 56 and in the court's written summary judgment procedure, then the court will not consider your documents. (Emphasis in original)

In any event, plaintiff is getting a second kick at the cat. When he responds to defendants' motion for summary judgment, he will be able to agree with or dispute defendants' proposed findings of fact, propose additional facts of his own, and support his factual statements with all the evidence that is necessary to show that he is entitled to judgment as a matter of law. He does not need another opportunity to file a separate motion for summary judgment.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of this court's order of August 18, 2003, is DENIED.

Entered this 29th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge