

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

ROGER LEE WARREN,

Plaintiff,

v.

GERALD BERGE,

Defendant.

ORDER

02-C-0093-C

Plaintiff has filed a letter dated December 27, 2002, in which he advises the court that he no longer wishes to prosecute this action. I construe plaintiff's letter as a motion for voluntary dismissal of the case.

When a motion for voluntary dismissal is filed after the defendants have filed an answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants and that plaintiff may not file

another lawsuit against these same defendants for the acts complained of in this lawsuit.

If plaintiff is opposed to a dismissal of his case with prejudice, he must request that his motion for voluntary dismissal be withdrawn no later than January 17, 2003.

ORDER

IT IS ORDERED that plaintiff may have until January 17, 2003, in which to withdraw his motion for voluntary dismissal. If, by January 17, 2003, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment in favor of defendants dismissing this case with prejudice.

Entered this 6th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge