

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

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EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,  
PETER HUIBREGTSE, GARY BOUGHTON,  
BRAD HOMPE, JOAN GERL,  
SGT. C. HANEY, THOMAS BELZ and  
HENRY BRAY,

Defendants.

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ORDER

03-C-129-C

Now that plaintiff Cherry has signed a medical release, defendants have written to withdraw their previously filed motion to dismiss (Dkt. #64) grounded on plaintiff's failure to provide the release. I will accept defendants' notice of withdrawal.

Separately, plaintiff Cherry has submitted documents titled "Addendum to Plaintiff's Proposed Findings of Fact in Support of his Motion for Summary Judgment" and "Addendum to Plaintiff's Affidavit in Support of his Motion for Summary Judgment."

In an order dated August 19, 2003, the magistrate judge stayed briefing on plaintiff's motion for summary judgment until the issue pertaining to the medical release could be resolved. He noted that if Cherry were to provide defendants with the medical release, the

briefing schedule on his summary judgment motion would resume pursuant to the July 31, 2003 order (dkt. 75). The July 31 order allows defendants 21 days from the date plaintiff provides the medical release in which to oppose plaintiff's motion for summary judgment and allows plaintiff 10 days from the date defendants file the response in which to file and serve a reply.

Although plaintiff's addenda to his motion for summary judgment is not contemplated by the court's briefing schedule, I conclude that defendants will not be prejudiced if I accept the affidavit and additional proposed findings of fact as part of plaintiff's supporting materials. This is because they were served and filed at the same time the briefing schedule resumed on plaintiff's motion for summary judgment and before any time had passed in which defendants are to serve and file their response.

#### ORDER

I accept defendants' notice of withdrawal of their motion to dismiss (Dkt. #64). The motion is considered to have been WITHDRAWN this date.

Further, I accept plaintiff's addenda to the materials supporting his motion for

summary judgment. Defendants may respond to these materials at the same time they respond to plaintiff's previously filed materials supporting his motion for summary judgment.

Entered this 2nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge