

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

PARISH GOLDEN,

Plaintiff,

v.

GERALD BERGE and JON LITSCHER,

Defendants.

ORDER

03-C-0403-C

Plaintiff has been allowed to proceed in this case on his claims that while he was a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, defendants Berge and Litscher violated his Eighth Amendment rights by denying him the ability to exercise, subjecting him to sleep deprivation and other physical and psychological injuries as the result of constant cell illumination, and causing him physical injury as a result of severe cell temperatures. On November 18, 2003, the magistrate judge held a preliminary pretrial conference for the purpose of scheduling motions deadlines and a trial date. Shortly thereafter, plaintiff moved for appointment of counsel to represent him. On December 1, 2003, I denied plaintiff's motion. Now plaintiff has written to request that he be allowed to dismiss the action voluntarily, without prejudice to his refiling the case at some later time.

When a motion for voluntary dismissal is filed after the defendants have filed an answer (defendants filed an answer in this case on October 23, 2003), 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 defendant has 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.

If plaintiff is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn.

ORDER

IT IS ORDERED that plaintiff may have until January 9, 2004, in which to withdraw his motion for voluntary dismissal. If, by January 9, 2004, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter

judgment dismissing this case with prejudice.

Entered this _____ day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge