

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

DRAKE A. SHEAD,

Plaintiff,

v.

WARDEN STIFF, Oxford F.C.I.;
Camp Ad. LINNETTE RITTER; and
Camp Case Mgr. CHERRI COMSTOCK,

Defendants.

ORDER

03-C-447-C

This is a civil action for monetary relief brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and 28 U.S.C. § 1331.

From the record I note that a telephonic preliminary pretrial conference was held on March 10, 2004. Plaintiff, who is representing himself, did not call in and could not be reached. The magistrate judge entered a pretrial conference order on March 11, giving the parties until July 1, 2004 to file dispositive motions. Defendants filed a motion for summary judgment on July 1, 2004. As of the date of this order, plaintiff has not filed a response to defendants' motion, and plaintiff has not communicated with the court in any other way since he filed his complaint on September 26, 2003.

In his pretrial conference order, the magistrate judge stated that he would not grant plaintiff an extension of the 30 day deadline for filing his response to defendants' motion for summary judgment. However, pro se litigants are afforded various protections that are not afforded to litigants represented by counsel. In the context of a summary judgment motion, pro se litigants are entitled not only to a reasonable opportunity to respond, but also to receive notice of the consequences of failing to respond appropriately to the motion. See Timms v. Frank, 953 F.2d 281, 285 (7th Cir.1992); Lewis v. Faulkner, 689 F.2d 100, 102 (7th Cir.1982). The notice must include a short and plain statement in ordinary English that any factual assertion will be taken as true by the court unless the plaintiff submits his own affidavits or other documentary evidence contradicting the assertion. Lewis, 689 F.2d at 102. A copy of Rule 56 must also be included with the notice. Id. It does not appear from the record that plaintiff has received notice of the consequences of failing to respond in the precise manner required by the Court of Appeals. Nor does it appear that plaintiff has received a copy of Rule 56. Therefore, plaintiff is on notice that the factual assertions in defendants' motion for summary judgment will be considered true by the court unless plaintiff submits affidavits or other documentary evidence contradicting those assertions. Also, I will order a copy of Rule 56 be sent to plaintiff with this order.

It may be that plaintiff's failure to submit a response, or to communicate with the court in any way concerning his case, is an indication that he is no longer interested in

prosecuting the case. Therefore, plaintiff may have until September 15, 2004 to respond to defendants' motion for summary judgment. If, by September 15, plaintiff fails to respond, then the Clerk shall enter judgment in favor of the defendants, dismissing this case with prejudice, for plaintiff's failure to prosecute.

ORDER

IT IS ORDERED that

1. Plaintiff may have until September 15, 2004, in which to file a brief, proposed findings of fact responding to defendants' proposed findings of fact, and all evidentiary materials necessary to oppose defendants' motion for summary judgment. A copy of Rule 56 shall be sent to plaintiff with this order.

2. If plaintiff fails to respond by September 15, the Clerk shall enter judgment in favor of the defendants and dismiss the case with prejudice, for plaintiff's failure to prosecute.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge