

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

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JEFFREY JON BONNIN,

Plaintiff,

v.

EAU CLAIRE COUNTY,  
WILLIAM R. BOELKE,  
KEVIN J. OTTO,  
JONATHAN J. PENDERGAST,  
MICHAEL P. MAYER and  
SHEILA A. BLANAS,

Defendants.  
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ORDER

03-C-65-C

After the time for opposing defendants' motion for summary judgment had passed, plaintiff moved for appointment of counsel to represent him in this case or, in the alternative, for permission to dismiss his case voluntarily without prejudice to his refileing it at a later date. In an order entered on December 16, 2003, I denied plaintiff's motion for appointment of counsel and stayed a decision on his alternative request to be allowed to dismiss the case without prejudice. I told plaintiff that because the time for briefing defendants' motion for summary judgment had passed, I would not allow him to dismiss the

case voluntarily unless the dismissal was with prejudice. In other words, plaintiff would have to agree that he could not file his lawsuit again. I gave plaintiff until January 5, 2004, in which to withdraw his motion for voluntary dismissal in the event he disagreed with a dismissal with prejudice. I advised plaintiff that if he chose to proceed, I would take defendants' motion for summary judgment under advisement and decide it without the benefit of having received plaintiff's view of the facts.

Now plaintiff has written a letter dated December 23, 2003, which I construe as a request to withdraw his motion for voluntary dismissal of the case and to renew his motion for appointment of counsel. The request is accompanied by documents titled "Response to Defendants' Proposed Findings of Fact" and "Brief in Response to Summary Judgment."

In support of his request to withdraw the motion for voluntary dismissal and renew his motion for appointment of counsel, plaintiff argues that he was hampered in his ability to oppose defendants' motion for summary judgment because he was in segregation "for the past few months" and has not had the opportunity to "adequately research and defend" the motion. He states that while he was confined in segregation, he did not have "access to things in [a] short or timely manner." Finally, he contends,

Mr. Misfeldt [opposing counsel] never provided me with a copy of my affidavit when he sent me the other affidavits from the defendants. He clearly used this information in his summary judgment [motion] but now he and the court expects me to defend or prove my case against the defendants when I'm only allowed to use the defendants' statements as true unchallengeable fact.

Plaintiff's protests about his inability to respond to defendants' motion are too late. Defendants filed their motion for summary judgment on October 30, 2003. A briefing schedule was established on November 3, 2003, which gave plaintiff thirty days, or until December 3, 2003, in which to oppose the motion. Plaintiff's first motion for appointment of counsel was not filed until December 4, 2003. He made no mention at that time of his alleged inability to review certain documents or of defendants' failure to provide him with documents they filed in support of the motion. Indeed, it is not at all clear what "affidavit" plaintiff is suggesting he did not get from defense counsel that defendants used in support of their motion. The court's record shows that the documents defendants rely on in support of their proposed facts are the affidavits of defendants Kevin Otto, William Boehlke, Michael Mayer, Sheila Blanas and Jonathan Pendergast, and two short excerpts from plaintiff's deposition testimony. Plaintiff admits that he received defendants' affidavits. Therefore, I presume plaintiff is contending that defendants failed to mail him a copy of his deposition testimony. The two facts defendants propose that rely on plaintiff's deposition testimony are:

1. Jeffrey J. Bonnin, the plaintiff, is an adult individual who is currently an inmate at the Columbia Correctional Institution, P.O. Box 900, 2925 Columbia Drive, Portage, Wisconsin. Dep. of Bonnin (8/27/03), p.4 at 7-13.

8. Mr. Bonnin claims that on November 11, 2002, the defendants used excessive force against him and were deliberately indifferent to his

legitimate medical needs. Dep. of Bonnin (8/27/03), p.5, at 20-24; and p.16, at 6-12.

Even if defendants omitted sending plaintiff a copy of his deposition testimony, plaintiff cannot seriously argue that he could not respond to these two assertions without first reviewing his previous testimony. Although I will grant plaintiff's motion for permission to withdraw his request for voluntary dismissal, I will deny his renewed request for appointment of counsel because his new arguments do not persuade me that appointed counsel is warranted.

Plaintiff's document titled "Response to Defendants' Proposed Findings of Fact" will not be considered for two reasons. First, it has been filed outside the time allowed for doing so, and plaintiff has not advanced any convincing argument why he could not have filed the document earlier. Second, the response does not comply with this court's summary judgment procedures, a copy of which was mailed to plaintiff following the magistrate judge's preliminary pretrial conference on May 29, 2003. Specifically, plaintiff fails to refer to evidence in the record to support his responses. Without citations to record evidence in support of plaintiff's statements, the statements cannot be considered in deciding the motion for summary judgment.

ORDER

IT IS ORDERED that plaintiff's request for permission to withdraw his motion for voluntary dismissal of this case is GRANTED; plaintiff's renewed motion for appointment of counsel is DENIED.

Defendants' motion for summary judgment is now under advisement.

Entered this 7th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge