

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

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JAMES R. WHITWELL,

Plaintiff,

v.

BRAD HOYT (Deputy Sheriff),

Defendant.

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ORDER

04-C-0981-C

In this civil action for monetary relief, plaintiff James Whitwell contends that defendant Brad Hoyt violated his rights under the Fourth Amendment when he stopped plaintiff's vehicle without probable cause. Trial is scheduled for April 3, 2006.

In an order dated February 27, 2006, I directed plaintiff to submit a letter by March 10, 2006, naming any witnesses he intends to call at trial, briefly describing the testimony he expects each witness to give and describing any other evidence he plans to introduce with respect to his remaining claim. The following day, the court received plaintiff's motion to stay the proceedings in this case indefinitely on the ground that his severe physical disabilities render him incapable of prosecuting this case. Plaintiff did not allege that his condition was likely to improve any time in the foreseeable future. Because there was no indication that a stay of proceedings would have any effect on plaintiff's ability to prosecute

the case, I denied his motion in an order dated March 2, 2006, and warned him that failure to comply with the court's February 27 order would result in dismissal of his case.

Now, plaintiff has submitted another letter, along with documentation from his most recent medical appointment. Because plaintiff's letter reiterates his request for an indefinite stay of all proceedings and indicates his intention to appeal any dismissal the court may order, I construe it as a motion for reconsideration of the March 2 order. In his letter, plaintiff alleges that he "has been unable to pursue this case since late June 2005 and has been unable to do depositions or even think about this case for that matter because of his unrelenting pain." Dkt. #33, at 1. Because plaintiff has not indicated how the passage of time is likely to result in any improvement of his ability to pursue his case, his motion will be denied.

The medical records plaintiff has submitted do little to assist him. Although they confirm that he suffers from a disability, they do not indicate that his condition is likely to improve or that any new treatment is on the horizon. Instead, they indicate that plaintiff's condition is chronic and is managed with pain medication, light exercise and rest. As I explained in the March 2 order, although I am sympathetic to plaintiff's disability and the discomfort it causes him, an indefinite stay makes little sense in the context of this case.

Trial is scheduled on a single claim: whether defendant stopped plaintiff's vehicle without probable cause on September 1, 2002. Plaintiff has not alleged that he has any evidence to support his claim and has acknowledged that he has not taken any steps to

pursue this case since June 2005. Although he has managed to write the court on several occasions explaining his physical limitations, I note that he has not provided an affidavit in support of his assertion that defendant lacked probable cause to stop his vehicle. Given these facts, plaintiff has not shown how a stay of the proceedings in this case would do anything more than delay the inevitable.

One final matter merits attention. In his letter, plaintiff alleges that he “has been in contact with the ACLU of Wisconsin and is awaiting an intake form in this matter for the [sic] possible representation in the discrimination and appeals process in this matter.” Dkt. #33, at 2. Plaintiff has not alleged that he has been given any indication that the ACLU is likely to accept his case or indicated the time frame in which such a decision will be made. Plaintiff’s physical limitations pre-date the filing of this suit and, by his own admission, have been an obstacle to the prosecution of this case for the past nine months. It would be unreasonable to delay adjudication of this matter on the off-chance that at some undisclosed future time the ACLU might agree to represent plaintiff in this matter. Therefore, on the court’s own motion, the case will be dismissed for plaintiff’s failure to prosecute.

#### ORDER

IT IS ORDERED that plaintiff’s motion for reconsideration of the court’s March 2, 2006 order is DENIED.

FURTHER, IT IS ORDERED that the clerk of court is directed to enter judgment in

favor of defendant Brad Hoyt and dismiss the case for plaintiff's failure to prosecute.

Entered this 13th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge