

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

SHAWN McGARVEY,

Plaintiff,

v.

THOMAS BORGAN,
ANDREW BATH and
LT. DOMMISSE,

Defendants.

ORDER

04-C-269-C

On May 13, 2005, I granted plaintiff's motion to amend his brief in opposition to defendants' motion for summary judgment "to correct a scrivener's error." Specifically, plaintiff noted that on page 14 of his brief, he had written "Plaintiff Aff., at P.3, ¶ 9," when he should have written "Plaintiff Aff., at P.2, ¶ 6." Now, plaintiff has filed a document titled "Motion to Correct Defective Pleadings in Plaintiff's Motion and Brief in Opposition to Defendants' Motion for Summary Judgment." In this document, plaintiff requests permission to amend his "motion and brief" to correct what appears to be dozens of errors he made when he cited evidence in the record to support his version of the facts. Unfortunately for plaintiff, the corrections he wishes to make relate to factual assertions he

made in his brief which, according to this court's summary judgment procedures, will be disregarded.

Plaintiff received this court's procedures to be followed on motions for summary judgment twice in this case. They were sent to him with the magistrate judge's preliminary pretrial conference order of November 23, 2004, and again with the court's letter of April 13, 2005, establishing the schedule for briefing the motion for summary judgment. The court's procedures provide that a party opposing a motion for summary judgment is to file three items: 1) a response to the movant's proposed findings of fact; 2) a brief in opposition to the motion; and 3) evidentiary materials. Procedure II.A. In addition, if the non-moving party is unable to tell fully his version of the facts that are important to a decision in his favor simply by responding to the facts proposed by the moving party, he may propose additional facts of his own. Procedure II.B.

The procedures were accompanied by two additional documents. In a document titled "Helpful Tips for Filing a Summary Judgment Motion in Cases Assigned to Judge Barbara B. Crabb," at paragraph 4, the parties are advised,

Your brief is the place to make your legal argument, not to restate the facts. When you finish it, check it over with a fine tooth comb to be sure you haven't relied upon or assumed any facts in making your legal argument that you failed to include in the separate document setting out your proposed findings of fact.

In a second document titled "Memorandum to Pro Se Litigants Regarding Summary

Judgment Motions,” the plaintiff was cautioned,

Please note that if you do not follow the procedures, you will not be given a second chance to do so. Therefore, pay particular attention to the following list of common pitfalls for pro se plaintiffs opposing motions for summary judgment.

- Problem: The plaintiff does not answer the defendants’ proposed facts properly.
- Solution: To answer properly, a plaintiff must file a document in which he sets out an answer to each numbered fact that defendants propose, using separate paragraphs that have the same numbers as the defendants’ paragraphs. See Procedure II.D.

Despite these instructions, plaintiff has submitted one document titled “Plaintiff’s Proposed Findings of Fact” containing 5 numbered statements of fact. The facts proposed in this document do not appear to be directly responsive to any of the 62 factual propositions set out in “Defendants’ Proposed Findings of Fact” (Dkt. #57).

Although plaintiff was warned that he would get one chance only to respond to a motion for summary judgment, I believe it is in the interests of justice to allow him one more brief opportunity to oppose defendants’ motion correctly.

ORDER

IT IS ORDERED that plaintiff’s “Motion to Correct Defective Pleadings in Plaintiff’s Motion and Brief in Opposition to Defendants’ Motion for Summary Judgment” is DENIED.

Further, IT IS ORDERED that the schedule for briefing defendants' motion for summary judgment is modified to allow plaintiff until May 31, 2005, in which to submit a response to defendants' proposed findings of fact that comply with this court's summary judgment procedures. Defendants may have until June 13, 2005, in which to serve and file a reply.

Entered this 18th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge