

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

KURTIS L. KING,

Plaintiff,

v.

MATTHEW FRANK in his official capacity;
GARY R. McCAUGHTRY, in his official
and individual capacities;
CURTIS JANSSEN, in his official
and individual capacities;
STEVEN SCHUELER, in his official
and individual capacities;
KEVIN FRITZ; TODD RUSSELL; MATT ROBINSON;
CLINT SCHLIEVE; and JENNIFER OPPERMAN,

Defendants.

ORDER

04-C-338-C

Plaintiff Kurtis King is proceeding in this action on claims for money damages based on allegations that while he was confined in the Health and Segregation Complex at the Waupun Correctional Institution, he was subjected to restricted telephone usage and constant night lighting, denied publications and visitation privileges, and denied adequate mental health care. Defendants moved for summary judgment on these claims on February 18, 2005, four days after plaintiff was transferred to the Wisconsin Resource

Center. According to the schedule established for briefing defendants' motion, plaintiff was to serve and file a response to the motion no later than March 21, 2005. Now, instead of opposing the motion directly, plaintiff has filed a document titled "Plaintiff's Affidavit Why Defendants' Motion for Summary Judgment Should not be Granted or Should at Least be Postponed." There is no indication that plaintiff mailed a copy of this document to John Glinski, counsel for the defendants, as Fed. R. Civ. P. 5 requires. Ordinarily, I would not consider such a submission. In this instance, however, in the interest of avoiding undue delay, I have made a copy of the document and am sending it to counsel with a copy of this order.

In his "affidavit," plaintiff argues that he should be given more time to oppose defendants' motion for summary judgment for two reasons. First, plaintiff contends that on January 18, 2005, he served a third set of interrogatories on defendants and that defendants made some objections he believes are improper. However, the record reflects that plaintiff did not move to compel more complete answers to his interrogatories and it is too late to do so now. Plaintiff was cautioned in the magistrate judge's September 28, 2004 preliminary pretrial conference order that he would not get an extension of the deadline for opposing defendants' motion for summary judgment if he waited too long to get the information he needed to respond to the motion.

Plaintiff also contends that he needs more time to respond to defendants' motion

because for years he has had symptoms of depression and Post Traumatic Stress Disorder, the latter of which was recently diagnosed. He contends that his new medications make him drowsy. However, plaintiff does not indicate precisely when he was placed on the new medication or make any showing that his drowsiness is so severe that he cannot prepare a response defendants' motion. Absent some proof that his new medication renders him incapable of concentrating and that the dosage cannot be altered to relieve this ill effect, I am not persuaded that plaintiff's ability to respond to defendants' motion has been so significantly impaired that a extension of the briefing deadline is warranted.

However, I am persuaded that plaintiff should be allowed a short extension of time to oppose defendants' motion for summary judgment, given the timing of his transfer to another institution just four days before defendants' motion was filed with this court. Although plaintiff does not say so, it is often the case that an inmate's property is packaged in advance of his transfer and does not catch up to him until some time after he has settled into his new quarters. I would not expect plaintiff to be able to work on his response during this transition period. Therefore, I will extend plaintiff's deadline for opposing defendants' motion for two weeks, which should be ample time to make up for the time he may have been separated from his legal papers during his transfer.

ORDER

IT IS ORDERED that plaintiff's motion for an extension of time in which to oppose defendants' motion for summary judgment is GRANTED. Plaintiff may have until April 4, 2005, in which to oppose the motion. Defendants may have until April 14, 2004, in which to serve and file a reply.

Entered this 29th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge