

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

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MICHAEL L. WINSTON,

Plaintiff,

v.

ORDER  
04-C-59-C

PHIL KINGSTON, MIKE  
VANDENBROOK, A. DURDIN,  
OFFICER JAMES, OFFICER TRIMBLE  
and OFFICER HESSELBERG,  
sued in their official and  
individual capacities,

Defendants.  
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Plaintiff Michael Winston was granted leave to proceed in forma pauperis in this action on March, 11, 2004. The parties have engaged in discovery and defendants' motion for summary judgment is presently under advisement. Now plaintiff has moved for permission to dismiss his case voluntarily.

When a motion for voluntary dismissal is filed after the defendants have filed an answer or motion for summary judgment, Fed. R. Civ. P. 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants.

If plaintiff is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than October 8, 2004.

ORDER

IT IS ORDERED that plaintiff may have until October 8, 2004, in which to withdraw his motion for voluntary dismissal. If, by October 8, 2004, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment in favor of the defendants, dismissing this case with prejudice.

Entered this 27th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge