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

GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY TODD JOHNSON,

Defendant.

ORDER

04-C-661-C

Before the court are plaintiff's motion to compel discovery (dkt. 98) and motion for admission of evidence (dkt. 101). Defendant opposes both motions. For the reasons stated below, I am denying them both.

On September 16, 2005, plaintiff filed his motion for discovery and demand for production of documents related to any investigations of defendant and several other employees of the sheriff's department. Plaintiff explains that he served discovery demands on defendant on January 21, 2005, and that defendant "sort of complied" on February 28, 2005 but did not provide everything requested. *See* dkt. 98 at 2. So, plaintiff is following up now.

On December 29, 2004, this court set the schedule for this case, including a firm August 19, 2005 discovery cutoff. The pretrial conference order confirmed this deadline and warned the parties:

> If either side thinks that the other side is not doing what it is supposed to do for discovery and they cannot work it out, then

> either the plaintiff or the defendant quickly should file a motion with the court. If the parties do not bring discovery problems to the court's attention quickly, then they cannot complain that they ran out of time to get information that they needed for summary judgment or for trial.

Dkt. 10 at 10.

Here, plaintiff waited over 6½ months to complain about defendant's discovery responses; more importantly, he did not even file his motion until four weeks after discovery closed. This constitutes waiver of the issue.

Even if this court were to consider the substance of plaintiff's discovery requests, it would avail him little: most of his claims are for irrelevant information, and whatever collateral value some of the information sought might have had as propensity evidence (or perhaps impeachment) likely would have been a very hard sell under F.R.Ev. 404(b) and 403. It is not a close enough call at this point in the case to consider any sort of a limited in camera review by the court. Plaintiff is not entitled to the discovery he seeks.

On September 27, 2005, plaintiff filed a "Motion for Admission of Evidence" in which he requests leave to offer into evidence event witness Ashley Pittman's affidavit and "portions of [her] deposition." Dkt. 101 at 1. Defendant strongly opposes this motion, characterizing it as a blatant attempt to avoid Pittman's impeachment at trial by her subsequently-revealed recorded conversations with plaintiff in which he urges her to lie about what she saw in order to help him.

Defendant's assessment of the situation matches the court's. Plaintiff's ongoing manipulation of Pittman and her testimony has the earmarks of fraud and perjury, but this

court has postponed until after trial any fact finding or possible sanctions. *See* September 9, 2005 Order, dkt. 95. Plaintiff's current motion is a casual[1] and shameless attempt to expose the jury to highly suspect testimony from a compromised witness without subjecting that witness to the cross-examination essential to an accurate credibility determination.

Even if one of the exceptions to live testimony listed in F.R.Civ. Pro. 32(a)(3) applied–and none do–this court would not allow plaintiff to present at trial Pittman's affidavit or deposition testimony. Plaintiff's gambit would exacerbate the effects of his alleged fraud and subvert the truth-finding process. The only way the jury will hear Ashley Pittman's version of events is if she testifies in person, under oath and subject to thorough cross examination by defendant's attorney.

ORDER

It is ORDERED that plaintiff's motion to compel discovery and motion for admission of evidence both are DENIED.

Entered this 4th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

[1] In the face of the evidentiary firestorm raging about him, plaintiff explains that he has "opted" not to use Pittman as a witness, instead "electing" to use her affidavit and the favorable portions of her deposition. Dkt. 101 at 1.