

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

JAMES R. WHITWELL,

Plaintiff,

ORDER

v.

04-C-0981-C

BRAD HOYT (Deputy Sheriff);
DOUGLAS COUNTY SHERIFF;
COUNTY OF DOUGLAS,

Defendants.

This is a civil action for monetary relief in which plaintiff James Whitwell contends that defendants violated his rights under the Fourth and Fourteenth Amendments when they arrested him without probable cause, maliciously prosecuted him and denied him medical care while he was in custody in the Douglas County jail.

In an order dated December 12, 2005, I denied defendants' motion for summary judgment because it appeared that defendants had failed to file proposed findings of fact in support of their motion as required by this court's summary judgment procedures. In the same order, I noted that plaintiff had not responded in any way to defendants' motion for summary judgment. Given plaintiff's apparent lack of interest in the case, I directed him to show cause no later than December 28, 2005, why his case should not be dismissed for

failure to prosecute. Now before the court are defendants' motion to reconsider the December 12, 2005 order and plaintiff's letter dated December 27, 2005, which I construe as a response to the order to show cause and a motion for an indefinite stay of the proceedings in this case. Defendants' motion will be granted and plaintiff's motion will be granted in part.

In support of the motion to reconsider, defense counsel avers that although she timely prepared proposed findings of fact to support defendants' motion for summary judgment, she failed to convert them to the format required for filing in this court's electronic filing database. She avers that she did not become aware that the proposed facts did not appear in the court's database until she received this court's December 12 order. Now, defendants' counsel has re-filed the proposed facts in the proper format and the document has been received successfully into the court's record. Defendants ask that the court accept the document and rule on the merits of their motion for summary judgment. Because the filing error was unintentional and because consideration of the merits of defendants' motion will not unfairly prejudice plaintiff, defendants' motion for reconsideration will be granted.

In response to the court's December 12, 2005 order, plaintiff states that he has not been able to pursue the case aggressively because he suffers from severe pain related to his physical disability. He notes that shortly before his response to defendants' motion for summary judgment was due to be filed, he wrote a letter to the court explaining his inability to defend his position because of the chronic pain. (Plaintiff has enclosed a copy of his

November letter with his response.) He states that he has an appointment scheduled for January 10, 2006 with St. Mary's Medical Center Pain Clinic and that sometime after his appointment, he will contact the court "with regard to his status."

As an initial matter, I note that there is no copy of plaintiff's November letter in the court's file except for the copy plaintiff filed with his recent response. In any event, I am not willing to delay proceedings in this case on the speculation that plaintiff's physical condition will improve significantly anytime soon. Although I am sympathetic to plaintiff's physical distress, it is simply not feasible to stay the progress of this lawsuit indefinitely. Both parties to litigation are better served if the case proceeds while evidence relating to the events giving rise to the suit is fresh. Although I am unwilling to postpone proceedings in this case indefinitely, I will set a deadline for plaintiff to respond to defendants' motion that takes into account plaintiff's need for extra time to respond to defendants' proposed findings of fact in light of his physical condition.

ORDER

IT IS ORDERED that

1. Defendants' motion for reconsideration of the December 12, 2005 order denying their motion for summary judgment for their failure to comply with the court's summary judgment procedures is GRANTED. Defendants' motion for summary judgment will be considered on its merits after the parties brief the motion according to the schedule set out

below.

2. Plaintiff's motion to stay proceedings is GRANTED in part. Plaintiff may have until February 17, 2006, in which to serve and file a response to defendants' motion and proposed findings of fact, consistent with this court's summary judgment procedures and Helpful Tips for Filing a Summary Judgment Motion in Cases Assigned to Judge Barbara B. Crabb, both of which were attached to the preliminary pretrial conference order entered in this case on June 9, 2005. In case plaintiff did not keep the materials, I am attaching another copy of each document. Defendants may have until February 28, 2006, in which to serve and file a reply.

Entered this 5th day of January, 2006.

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