

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

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WILLIE C. SIMPSON,

Plaintiff,

v.

JANEL NICKEL, TIMOTHY DOUMA,  
PHILIP KINGSTON, WILLIAM  
NOLAND, MATTHEW J. FRANK,

Defendants.

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ORDER

05-C-232-C

Following remand of this action from the Court of Appeals for the Seventh Circuit on July 7, 2006, I directed that a telephone conference be scheduled promptly before United States Magistrate Judge Stephen Crocker at which a briefing schedule on defendants' motion for summary judgment can be established, a new trial date can be set and deadlines may be set for completing discovery and disclosing witnesses. The clerk of court has scheduled the conference for August 16, 2006, at 9:00 a.m. Now, however, plaintiff has written to request a voluntary dismissal of the action pursuant to Fed. R. Civ. P. 41.

When a motion for voluntary dismissal is filed after the defendants have filed an answer or motion for summary judgment such as in this case, Rule 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 both in this court and on appeal, 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is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than August 4, 2006.

#### ORDER

IT IS ORDERED that plaintiff may have until August 4, 2006, in which to withdraw his motion for voluntary dismissal. If, by August 4, 2006, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 24th day of July, 2006.

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