

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

ROGER DALE GODWIN,

Plaintiff,

v.

JIM SUTTON and MATTHEW J. FRANK,

Defendants.

MEMORANDUM

05-C-493-C

This is a civil action for monetary and injunctive relief brought under 42 U.S.C. § 1983. While this court was considering a motion brought by defendants to dismiss this case for plaintiff's failure to exhaust his administrative remedies as required under 42 U.S.C. § 1997e(a), plaintiff filed a letter dated January 27, 2006, notifying the court that he was dismissing this case voluntarily.

Fed. R. Civ. P. 41(a)(1) governs plaintiff's notice of voluntary dismissal. It provides,

. . .an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice . . .

In this case, defendants have not filed an answer or a motion for summary judgment. Therefore, plaintiff is free to dismiss his case voluntarily, without prejudice to his refiling his complaint at a later date.

Accordingly, I accept plaintiff's notice of voluntary dismissal, and direct the Clerk of Court to close this file.

Entered this 3rd day of February, 2006.

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