IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS W. REIMANN,

ORDER

Plaintiff,

05-C-501-C

v.

DAVID ROCK, JOHN PAQUIN,
MS. TIERNEY, CATHERINE FERREY
and LIZZIE TEGELS,

Defendants.

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Unhappy with defendants' proposed findings of fact in support of their motion for summary judgment, plaintiff has filed a "Motion to Strike Pleadings" and a "Verified Motion for Continuance." In his motion to strike, plaintiff asks that this court strike "all references to [defendant] Rock's alleged expertise as an 'expert' as it is 'redundant, immaterial and impertinent.'" Plaintiff appears to understand that defendant Rock has not presented himself in this case as an expert witness pursuant to Rule 702 of the Federal Rules of Evidence to offer "scientific, technical, or other specialized knowledge that will assist the trier of fact to understand the evidence or to determine a fact in issue. . . ." Rather, plaintiff simply wants "all references to Rock's checkered qualifications and employment history . . . stricken from

the findings of fact/affidavit as immaterial/irrelevant." However, plaintiff's lawsuit involves a challenge to the basis for defendant Rock's decision to reduce his pain medication, and Rock's medical training may be relevant to resolution of that question. If, at the time the court rules on defendants' motion for summary judgment, it concludes that a fact proposed by either party is immaterial to a decision whether plaintiff's constitutional rights were violated, it will be disregarded. There is no need for the court to engage in a separate exercise now to parse the immaterial facts from the material ones. Therefore, plaintiff's "motion to strike" will be denied.

I construe plaintiff's "Verified Motion for Continuance" as a motion for an enlargement of time in which to oppose defendants' motion for summary judgment. At the present time, plaintiff's opposing materials are due to be served and filed no later than July 10, 2006. In his motion, plaintiff says he needs more time to oppose defendants' motion because 1) he has not received "any of the documents AAG Dresel-Velasquez said would be forthcoming"; 2) he has asked to see his Health Services Unit files, but "they are not responded to"; 3) he does not have physical access to a law library or a typewriter and the nerve damage in his hands makes it impossible for him to draft a brief by hand (I note that all of plaintiff's present submissions are handwritten); 4) he is still trying to figure out "the reasons justifying the specious 'security concerns'" for his having to wear restraints when he is transported outside the prison; and 5) he is subject to opposing counsel's

"neverending dilatory tactics to evade [his] discovery requests."

Plaintiff's justifications numbered 1, 2, 4 and 5 fall into the same category: plaintiff has not obtained all the evidence he wants to rebut defendants' motion. With respect to plaintiff's complaints about his inability to obtain discovery to prove his claims, the record reveals that on three separate occasions, Magistrate Judge Stephen Crocker has addressed plaintiff's discovery motions. On March 27, 2006, the magistrate judge directed defendants to provide plaintiff with general information for "the group of inmates transferred from NLCI for security reasons during calendar year 2004," including "the number of inmates and a synopsis of what each of them did that caused the institution to transfer them." In addition, the magistrate judge directed defendants to disclose to plaintiff any special placement need forms filed by other inmates against plaintiff on which defendants may have relied in their decision to transfer plaintiff from New Lisbon Correctional Institution. Magistrate Judge Crocker denied the remaining portions of plaintiff's motion to compel.

On April 11, 2006, the magistrate judge denied plaintiff's motion for a discovery hearing because plaintiff had not submitted to the court the requests for admissions he had served upon defendants, copies of the documents whose authenticity he had asked defendants to concede in his request for admissions, and defendants's answers to the requests, all of which were the subject of plaintiff's motion. In addition, the magistrate judge denied plaintiff's motion to compel discovery with respect to information plaintiff wanted

that was based upon speculation or related to matters not a part of this lawsuit. Finally, the magistrate judge told plaintiff that his complaint that defendants were not making available to him "policy documents" could not be granted without plaintiff establishing first "that relevant written policies exist that [plaintiff] cannot obtain from the institution."

On April 24, 2006, May 1, 2006 and May 10, 2006, plaintiff filed additional motions to compel discovery. Distilled, the motions sought an order directing defendants to allow plaintiff to review "DOC/BHS policies" and to respond to his second request for production of documents. Defendants responded to plaintiff's motions on May 15, 2006, noting first that the policies plaintiff wanted no longer existed in hard copy format but that, on April 25, 2006, BHS had made the decision to make a hard copy and provide it for plaintiff's review within three weeks of that date. In addition, defendants explained that they had not responded to plaintiff's second request for production of documents because they had not received the request. Defendants promised that, upon receipt of the request, they would respond to it promptly. Because it appeared that defendants were willing to respond to plaintiff's second request for production of documents and request for "DOC/BHS policies," the magistrate judge denied plaintiff's motions to compel on May 18, 2006.

Now, more than a month after his last motions to compel discovery were denied, plaintiff contends that he cannot respond to defendants' motion for summary judgment because he has not received "any of the documents AAG Dresel-Velasquez said would be

forthcoming." It is impossible to make out from this vague assertion just what it is that plaintiff believes he is missing. If defendants have not yet responded to plaintiff's second request for production of documents, it was plaintiff's obligation to make a showing how long ago he served defendants with the request so that the court could determine whether defendants failed to respond within the time permitted under the Federal Rules of Civil Procedure. If defendants did not give plaintiff an opportunity to review the policies they promised to make available to him by early May 2006, then plaintiff should have promptly notified the court that defendants had not made good on their promise. Plaintiff has done neither of these things.

In the preliminary pretrial conference order entered in this case on January 18, 2006, plaintiff was advised that

> If the parties disagree about discovery requests, then this court would like them to try to work it out if they can do so quickly, but the court does not require this if it would be a waste of time. 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.*

(Emphasis added).

With respect to plaintiff's complaints that he hasn't had time to obtain the evidence he wants, I direct plaintiff's attention to that part of the magistrate judge's preliminary

pretrial conference order in which he told the parties that because it is "very hard for an imprisoned plaintiff to prepare everything needed to respond to a summary judgment motion," the court has built into the schedule for briefing motions for summary judgment additional time for plaintiff to oppose the motion. The magistrate judge cautioned plaintiff then that because additional time was being given to him on the front side, this court would not grant an extension of the deadline unless unusual circumstances warranted an extension

> . The only way to get more time [to oppose a motion for summary judgment] would be if you can convince the court that something totally unfair happened that actually prevented you from meeting your deadline, and this was completely somebody else's fault. Some things that might seem unfair to you are **not** reasons to get more time. For example, you will not get more time just because you claim that you did not have enough time or money to make copies. You will not get more time if you waited too long to get all the information you think you need to respond to the motion. . . .

Plaintiff has had fair and ample warning that he would need to conduct discovery early and seek court intervention promptly if defendants failed to fulfill their discovery obligations. He cannot complain now that he has not had enough time to obtain evidence he needs to oppose defendants' motion for summary judgment.

Plaintiff suggests that he cannot prepare a brief in response to defendants' motion for summary judgment because he does not have physical access to a law library or typewriter and nerve damage in his hands makes it impossible for him to draft his brief by hand. Preparing a brief in opposition to defendants' motion is far less important than responding

to defendants' proposed findings of fact and identifying evidence in the record to support plaintiff's version of the facts in accordance with this court's Procedures to be Followed on Motions for Summary Judgment, a copy of which was sent to plaintiff with the magistrate judge's preliminary pretrial conference order. The court is charged with the final responsibility for knowing the law that governs plaintiff's claims. It is the parties' primary responsibility to present evidence and make clear to the court which facts are disputed and which facts are undisputed. It is obvious from plaintiff's current motions that he is able to hand-write documents, although he may have to prepare them more slowly over a longer period of days than most prisoners. Nevertheless, I do not believe he is physically unable to accomplish the task in the thirty days he has been allowed.

There is, however, one valid reason to extend plaintiff's deadline slightly. In the cover letter accompanying plaintiff's motions, plaintiff reveals that after he was transferred to the Oshkosh Correctional Institution (the transfer occurred sometime between the middle and late part of May), he was separated from his "copy of [the court's] scheduling order and can't remember [the court's] local rule on responding to proposed findings of fact." Although plaintiff does not claim that he does not have defendants' motion for summary judgment and supporting papers, nor could he in light of his clear references to the content of these documents in his motion to strike, it is imperative that plaintiff comply precisely with this court's summary judgment procedures if he is to have any chance of defending against

defendants' motion. Therefore, I am enclosing another copy of the procedures to plaintiff with this order, and I will allow him a two-week extension of time in which to serve and file his opposing materials.

ORDER

IT IS ORDERED that plaintiff's "Motion to Strike Pleadings" is DENIED.

Further, IT IS ORDERED that plaintiff's "Verified Motion for Continuance" is GRANTED. The schedule for briefing defendants' motion for summary judgment is MODIFIED as follows.

Plaintiff may have until July 24, 2006, in which to serve and file a brief if desired, together with his response to defendants' proposed findings of fact and evidentiary materials in support. Defendants may have until August 4, 2006, in which to serve and file a reply. No requests for further extensions will be entertained.

Entered this 20th day of June, 2006.

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