

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

MICHAEL LEE RAUNIO,

Plaintiff,

v.

STEPHANIE HAHN,

Defendant.

ORDER

06-C-163-C

Plaintiff was granted leave to proceed in this action on his claim that defendant Stephanie Hahn deliberately failed to insure that his medication needs and lower bunk restriction were made known to officials at the Marathon County jail when he was transferred there for a period of time in October 2005. On July 11, 2006, defendant answered plaintiff's complaint, raising various affirmative defenses, requesting dismissal of plaintiff's complaint "on the merits" and, alternatively, demanding a jury trial. Now plaintiff has filed a letter dated July 13, 2006, in which he objects to certain statements defendant made in her answer and argues that dismissal of his complaint is not warranted.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim

against the defendant. Although defendant has raised certain affirmative defenses in her answer she has not filed a motion to dismiss the case on its merits and it is not likely that she will. In screening plaintiff's complaint, I have determined already that the complaint states a claim upon which relief may be granted. In any event, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides that averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file but will not be considered.

Entered this 19th day of July, 2006.

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