

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

KENNETH E. KING,

Plaintiff,

v.

DAVID L. DITTER,

Defendant.

ORDER

06-C-257-C

In this civil action for declaratory and monetary relief, plaintiff Kenneth King, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, contends that defendant David Ditter, his former prison job supervisor, lowered his pay and ultimately fired him in retaliation for statements he made and grievances he filed criticizing Ditter's managerial practices. Plaintiff filed his lawsuit on May 12, 2006. Since that time, the parties have engaged in numerous discovery disputes (prompting approximately three motions to compel, two motions for sanctions and a number of miscellaneous discovery motions). Presently, the parties are in the process of briefing defendants' motion for summary judgment.

Before the court is a letter from plaintiff dated February 3, 2007, which plaintiff has

characterized as a “letter motion of voluntary dismissal.” In his letter, plaintiff indicates that he wishes to abandon his lawsuit because of perceived unfairness in the discovery process and in the magistrate judge’s handling of the parties’ discovery disputes. (Because plaintiff does not point to any specific errors in the magistrate judge’s rulings, I do not understand plaintiff’s letter to be a motion for reconsideration of the magistrate’s January 31, 2007 discovery order, dkt. #50.)

When a motion for voluntary dismissal is filed after the defendant has 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 defendant has been required to defend this action, 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is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than February 20, 2007, the same day plaintiff’s response to defendant’s motion for summary judgment is due. Should plaintiff decide to withdraw his motion for voluntary dismissal, his summary judgment response should accompany his withdrawal notice. He will not be given any additional extensions to his summary judgment response deadline. If plaintiff does not withdraw his motion for voluntary dismissal by February 20, 2007, judgment will be entered in favor of

defendants and the case dismissed with prejudice to plaintiff's refiling it in the future.

ORDER

IT IS ORDERED that plaintiff may have until February 20, 2007, in which to withdraw his motion for voluntary dismissal. If, by February 20, 2007, 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 12th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge