

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

BRANDEN SUSTMAN,

Plaintiff,

v.

ORDER

06-C-0293-C

STEVE WATTERS, Director (Sand Ridge Secure Treatment Center)
STEVE SCHNEIDER, Security Director (S.R.S.T.C.)
DAVID THORNTON, Treatment Director (S.R.S.T.C.)
TIM THOMAS, Unit Manager (S.R.S.T.C.)

Defendants.

The deadline for filing dispositive motions in this case was December 15, 2006. On December 15, defendants filed a motion for summary judgment. According to the schedule established for briefing the motion, plaintiff was to file and serve no later than January 16, 2007, a brief, evidentiary materials and proposed findings of fact responding to defendants' motion. Instead, plaintiff has filed a separate motion for summary judgment, together with a brief and an affidavit.

It is too late for plaintiff to file a separate motion for summary judgment. Therefore, Judge Crabb will deny it in a separate order upon her return to the court from out of state.

Nevertheless, I note that plaintiff may have intended his separate motion to serve as his response to defendants' motion for summary judgment. Unfortunately, plaintiff's submissions fail to comply precisely with this court's summary judgment procedures. In particular, plaintiff has not filed proposed findings of fact in response to defendants' proposed findings of fact or evidentiary materials relating to his response.

In deciding a motion for summary judgment, the court looks to the moving party's proposed findings of fact and the opposing party's response to determine the facts of the case. The critical nature of the proposed findings of fact is made clear in the court's summary judgment procedures and in a document attached to the top of the procedures titled "Helpful Tips for Filing a Summary Judgment Motion in Cases Assigned to Judge Barbara Crabb." (A copy of the procedures and the tips was sent to plaintiff with this court's preliminary pretrial conference order entered herein on August 18, 2006.) Tip number 1 states, "All facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact." Tip number 3 states, "A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute."

Although the court can treat plaintiff's brief in support of his untimely motion for summary judgment as a brief in opposition to defendants' motion for summary judgment, Judge Crabb will be required under the court's procedures to accept defendants' proposed

findings of fact as true and undisputed unless plaintiff responds to those proposed facts in the manner provided in the procedures and succeeds in putting one or more of them into dispute.

Defendants proposed a total of 53 facts, each simply stated. Plaintiff was cautioned at the preliminary pretrial conference that if he failed to comply with this court's summary judgment procedures, he would not get more time to do it over unless the court were to decide on its own that he should get a second chance. Because it is clear that plaintiff did not understand the rules regarding his responsibility to respond to defendants' proposed findings of fact, I will grant him a second chance to do so.

ORDER

IT IS ORDERED that plaintiff may have an enlargement of time to February 9, 2007, in which to file a response to defendants' proposed findings of fact that comply in every respect with this court's summary judgment procedures. (Another copy of the court's procedures is attached to plaintiff's copy of this order.)

Further, IT IS ORDERED that defendants may have until February 19, 2007, in which to serve and file a reply.

Entered this 22d day of January, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge