

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

JOSEPH VAN PATTEN,

Plaintiff,

MEMORANDUM

v.

06-C-374-C

MATTHEW FRANK,
JOSEPH LADWIG, WARDEN
DEPPISCH and DR. LUY,

Defendants.

In this proposed civil action for monetary relief, plaintiff Joseph Van Patten, a prisoner at the Shawano County Jail in Shawano, Wisconsin and a former prisoner of the Fox Lake Correctional Institution in Fox Lake, Wisconsin, contends that defendants Dr. Luy, Warden Deppisch and Matthew Frank exhibited deliberate indifference to his serious medical needs by ignoring his need for appropriate treatment of his broken leg and that defendant Ladwig exhibited deliberate indifference to his serious medical needs when Ladwig forced him to walk unassisted for half a mile in order to obtain medical treatment for his broken leg.

The case has gotten off to a rocky start. On February 8, 2007, plaintiff moved to

dismiss the case, contending that he wished to pursue it at a later time. Because defendants had answered the complaint and a preliminary pretrial conference had been held several months earlier, I agree to dismiss the suit on the condition that defendants would agree to dismissal without prejudice. Defendants did not agree, and I therefore provided plaintiff with an opportunity to withdraw his motion for voluntary dismissal.

On February 20, 2007, plaintiff withdrew his motion. On the same day, he filed a notice of appeal. It is not clear that plaintiff understood the ramifications of filing an interlocutory appeal; however, once the notice was filed, this court was unable to act until the court of appeals issued its ruling. Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). The wait was a short one. On March 9, 2007, the court dismissed plaintiff's appeal, returning the case to this court for further proceedings.

Because plaintiff withdrew his motion, the case will pick up where we left off. The calendar established at the preliminary pretrial conference is reinstated with dispositive

motions due June 1, 2007.

Entered this 16th day of March, 2007.

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