

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

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ALFRED RILEY,

Plaintiff,

v.

HELENE NELSON, STEVE WATTERS,  
STEVE SCHNEIDER, DAVID THORNTON,  
WENDY NORDBERG, and STEVE  
HAMILTON,

Defendants.  
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ORDER

06-C-574-C

Plaintiff Alfred Riley is detained by the state of Wisconsin at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, pursuant to Wis. Stat. Ch. 980, Wisconsin's Sexually Violent Persons Law. In this civil action for declaratory, injunctive and monetary relief, brought under 42 U.S.C. § 1983, plaintiff is contending that defendants Helene Nelson, Steve Watters, Steve Schneider, David Thornton, Wendy Nordberg and Steve Hamilton violated his right to free speech by prohibiting him from possessing pornography and books about psychology.

On December 23, 2005, plaintiff filed this lawsuit in the United States District Court

for the Eastern District of Wisconsin. On April 25, 2004, defendants filed a motion to dismiss the complaint under Fed. R. Civ. P. 8 or, in the alternative, under Rule 12(b)(6). At the same time, defendants filed a motion to transfer venue of the case to this district under 28 U.S.C. § 1404. On October 2, 2006, Judge Adelman granted defendants' motion to transfer venue, and on October 16, 2006, I granted in part and denied in part defendants' motion to dismiss.

On October 27, 2006, defendants answered the complaint. Subsequently, a preliminary pretrial conference was held before United States Magistrate Judge Stephen Crocker, who set a trial date and scheduled deadlines for completing the various steps required to move a case to resolution.

Now, plaintiff has written to the court asking to dismiss his action against defendants "at this time" because he lacks the financial resources to pursue the case. When a motion for voluntary dismissal is filed after the defendants have filed an answer, 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."

Defendants have responded to plaintiff's request by stating that they will stipulate to dismissal of plaintiff's claim but only if the dismissal is to be with prejudice. Because defendants have been required to defend this action, their position is reasonable. Therefore, I will give plaintiff until March 16, 2007, in which to withdraw his motion for voluntary

dismissal. If, by March 16, 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 to plaintiff's refiling it in the future.

One more matter requires brief attention. The deadline for filing dispositive motions in this case is March 16, 2007. In their letter responding to plaintiff's request, defendants ask for a two week extension in order to avoid filing a motion for summary judgment that may turn out to be unnecessary. Their request will be granted; defendants may have until March 30, 2007 in which to file and serve their motion for summary judgment should plaintiff withdraw his motion for voluntary dismissal.

#### ORDER

IT IS ORDERED that plaintiff may have until March 16, 2007, in which to withdraw his motion for voluntary dismissal. If, by March 16, 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.

FURTHER, IT IS ORDERED that defendants may have until March 30, 2007 in

which to file and serve their motion for summary judgment.

Entered this 12th day of March, 2007.

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