

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

---

MARK RENALDO LOWE,

Plaintiff,

v.

ORDER

06-C-680-C

DR. KAPLAN, NURSE DAN,  
and MARY JO SCHMITT,

Defendants.

---

Plaintiff is proceeding in this action on his claims that 1) defendant Nurse Dan refused to provide him an extra mattress to alleviate his chronic back pain; 2) defendant Dr. Kaplan performed an inadequate examination of his back and refused to offer him any effective treatment for his chronic back pain; and 3) defendant Mary Jo Schmitt failed to arrange for medical care for plaintiff. Defendants have answered the complaint and a preliminary pretrial conference has been held. At the preliminary pretrial conference, Magistrate Judge Stephen Crocker set a deadline of October 26, 2007, for filing dispositive motions. Now before the court is plaintiff's motion for summary judgment, which will be denied at the outset for plaintiff's failure to comply with this court's summary judgment

procedures. (A copy of the procedures was sent to the parties with the magistrate judge's preliminary pretrial conference order.)

This court's procedures require that a party moving for summary judgment submit a motion, evidentiary materials and at least two other documents separate from the motion: a brief and proposed findings of fact. Procedures I.A. Plaintiff's submission consists of a single document titled "Petitioner's Motion for Summary Judgment Pursuant to Rule 56 of Federal Rules of Civil Procedure."

A brief is a document in which a party argues his or her view of the law governing the legal claims raised in the lawsuit. Proposed findings of fact, however, are the meat of the lawsuit. This is the document in which the parties tell the complete story about what happened between them that led the plaintiff to the courthouse steps. In other words, proposed findings of fact must identify the parties, the nature of the dispute between the parties and the circumstances surrounding the dispute. Procedure I.B.3. Each factual proposition is to be written in separate, numbered paragraphs. Procedure I.B.1. At the end of each factual statement proposed, there is to be a reference to evidence in the record that supports the fact proposed. Procedure I.B.2.

Plaintiff's submission is a hodgepodge of factual statements, some pertaining to the story behind the lawsuit and many merely describing the procedural history of the lawsuit after it was filed. No factual statement is confined as nearly as possible to a separate

numbered paragraph, and few refer to evidence in the record to support the fact proposed.

Finally, plaintiff's documentary evidence (the exhibits) are not admissible because none of them have been authenticated. Documentary exhibits on their own are not admissible in evidence. See Procedure I.E. Documents used as exhibits must be accompanied by an affidavit of the person who has custody of the documents stating what those documents are. For example, during the time of the incident at issue in this case, notations may have been made in plaintiff's medical records at the prison and plaintiff may have filed one or more health service requests. If plaintiff wants to submit copies of his health service requests as evidence, he should mark the requests as, say, exhibits "A" and "B," and attach the exhibits to an affidavit in which he declares or swears under penalty of perjury that the documents marked as exhibits "A" and "B" are true and correct copies of the health service requests he sent to the Health Services unit on a specific date. If plaintiff wants to submit as evidence copies of excerpts from his medical record, he must mark the excerpts as exhibits and attach them to the affidavit of the keeper of his medical records in which the keeper swears or declares under penalty of perjury that the documents are from plaintiff's medical files and are true and correct copies of the originals in that file.

Because plaintiff's motion for summary judgment and submissions in support are not in compliance with the court's procedures, they cannot be considered. Therefore, plaintiff's motion will be denied. However, this should not prejudice plaintiff. He will have a chance

to submit his version of the facts and evidentiary materials in proper form in response to defendants' motion, if defendants choose to file such a motion. Plaintiff is urged to read carefully the court's procedures for responding to defendants' proposed findings of fact and submit his response and evidentiary materials correctly so that they can be considered in deciding the motion.

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED without prejudice for plaintiff's failure to conform his motion to this court's summary judgment procedures.

Entered this 26th day of September, 2007.

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