

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

MARK RAHOI,

Plaintiff,

ORDER

06-C-691-C

v.

DOCTOR SIRIN, DOCTOR HUIBREGTSE,
and DOCTOR BURTON COX, JR., all sued
individually and in their official capacities,

Defendants.

In this case, plaintiff Mark Rahoi is proceeding on claims that defendants Doctor Sirin, Doctor Huibregtse and Doctor Burton Cox, Jr. were deliberately indifferent to his serious medical needs when they failed to arrange for him to receive surgery for a rotator cuff tear and physical therapy for complications from spinal cord injuries and that defendants Huibregtse and Cox were deliberately indifferent to his need for prescribed medication when they failed to insure that the prescriptions were timely renewed.

Now before the court is plaintiff's motion for a second extension of time in which to respond to defendants' motion for summary judgment. Plaintiff's response to defendants'

motion was due on November 2, 2007. However, plaintiff did not file a response and instead filed the present request for an extension of time. In his motion, plaintiff asserts that he is allowed only one hour a day in the prison law library and that he is waiting to receive declarations in support of his case. It is not clear which declarations plaintiff does not have that he believes he needs. However, on November 2, 2007, the court received two affidavits from doctors in support of plaintiff's case. Dkt. ## 45, 46. These affidavits were electronically filed by a lawyer who does not represent plaintiff, but instead filed them "only as a courtesy to him." The email to which the affidavits were attached indicates that copies of the affidavits were sent to plaintiff on November 2, 2007 by U.S. Mail. Therefore, it is possible that the affidavits filed on November 2 were the affidavits for which plaintiff was waiting and that his motion and these materials crossed in the mail.

When plaintiff received a first extension of time in which to respond to defendants' motion for summary judgment, he was warned that no further extensions would be granted. Dkt. #44. Therefore, as a general matter, I would not be inclined to grant plaintiff's motion. However, after reviewing the two affidavits filed on November 2, 2007, I am convinced that the interests of justice require the court to review several prior orders in this case.

The affidavits filed on November 2 are those of Dr. William Waring and Dr. Steven Grindel, doctors who treated plaintiff before he was incarcerated. In the newly filed affidavits, the doctors state that they believe that the care plaintiff has received does not

represent reasonable care and Dr. Waring states that plaintiff may yet benefit from surgery for his torn rotator cuff. These disturbing statements contradict arguments made by defendants when they opposed plaintiff's previous motions for a preliminary injunction. Plaintiff's most recent motion for a preliminary injunction was denied, in part, on the ground that he had passed the point at which such surgery would be beneficial.

Of course, on their own, these affidavits are not an effective response to defendants' motion for summary judgment. They were filed by a third party, the doctors do not appear to have been disclosed as experts and the affidavits are not "proposed findings of fact" required by this court's summary judgment procedure. In addition, the court will not accept these affidavits as evidence without giving defendants an opportunity to respond to them. Nevertheless, I am concerned that the affidavits suggest that the underlying facts of this case may be quite different from the facts presented by defendants in their motion for summary judgment and in opposition to plaintiff's motions for a preliminary injunction and that the court has relied upon in reaching prior decisions. Therefore, a telephonic status conference will be held as soon as possible before Magistrate Judge Stephen Crocker. At that conference, the parties should be prepared to discuss whether plaintiff's motion for a preliminary injunction should be re-examined and, if so, when it would be possible for the parties and their witnesses to appear at a hearing on that motion. In the meantime, the summary judgment briefing schedule will be suspended. Plaintiff's motion for an extension

of time to oppose the motion for summary judgment will be denied as moot.

ORDER

IT IS ORDERED that

1. Plaintiff Mark Rahoi's motion for an extension of time in which to file his response to defendants' motion for summary judgment is DENIED as moot;
2. Briefing regarding the motion for summary judgment of defendants Doctor Sirin, Doctor Huibregtse and Doctor Burton Cox, Jr. is suspended; and
3. A telephonic status conference will be scheduled as soon as possible before United States Magistrate Judge Stephen Crocker.

Entered this 8th day of November, 2007.

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