

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

JAMES M. UPTHEGROVE,

Plaintiff,

v.

HEALTH PROFESSIONALS, LTD and
STACY ROSE, RN,

Defendants.

ORDER

3:07-cv-0596-bbc

Plaintiff was granted leave to proceed in this action on December 26, 2007. On January 16, 2008, defendants answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a document titled "Declaration of James M. Upthegrove," in which he replies to factual statements made in the answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff

would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order will be made in this case. According to Fed. R. Civ. P. 8(d), averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff will not be permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's "Declaration of James M. Upthegrove," construed as a reply to defendants' answer, will be placed in the court's file but will not be considered.

Entered this 28th day of January, 2008.

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