

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

STANLEY FELTON #283330,

Plaintiff,

ORDER

v.

08-cv-227-slc

PETER ERICKSEN, CAPT. BRANT,
LIZ LEMERY and LT. LAMBRECHT,

Defendants.

In an order entered in this case on July 2, 2008, this court granted plaintiff Stanley Felton's request for leave to proceed *in forma pauperis* on his retaliation claim against defendants Ericksen, Brant, Lemery and Lambrecht. In addition, on October 22, 2008, this court allowed plaintiff to amend his complaint to include a second retaliation claim as well as free speech and equal protections claims against defendants Brant and Ericksen.

On January 12, 2009, defendants filed a motion for summary judgment. Under the terms of the August 22, 2008 preliminary pretrial conference order, plaintiff was given a deadline of February 11 to file his response. Now plaintiff moves for an extension of time of 45 days in which to file his response.

Plaintiff's argument in support of his request for an extension hinges on his lack of discoverable information. In his motion, plaintiff says that he sent discovery requests to

defendants on December 28, 2008, January 16, 2009 and January 30, 2009. However, he contends that defendants have not adequately responded to his requests “with the exception of a few questions answered through defendants’ affidavits submitted in their motion for summary judgment.” Specifically, plaintiff believes that he cannot properly respond to defendants’ motion until he receives information regarding the whereabouts of two witnesses who have personal knowledge regarding plaintiff’s claims.

Plaintiff is aware that this court takes a stringent approach to requests for extensions of summary judgment deadlines. He says that he “will not request any other extensions, this is the 1st and last.” Undoubtedly, he carefully considered the portion of the August 22 pretrial conference order warning that an extension would be allowed only in special circumstances. The specific section states:

BE AWARE: you are not going to get an extension of this 30 day deadline. The only way to get more time would be if you can convince the court that something totally unfair happened that actually prevented you from meeting your deadline, and this was completely somebody else’s fault. Some things that might seem unfair to you are **not** reasons to get more time. For example, you will not get more time just because you claim that you did not have enough time or money to make copies. You will not get more time if you waited too long to get all the information you think you need to respond to the motion.

.....

If the parties disagree about discovery requests, then this court would like them to try to work it out if they can do so quickly, but the court does not require this if it would be a waste of time. If either side thinks that the other side is not doing what

it is supposed to do for discovery and they cannot work it out, then either the plaintiff or the defendant quickly should file a motion with the court. If the parties do not bring discovery problems to the court's attention quickly, then they cannot complain that they ran out of time to get information that they needed for summary judgment or for trial.

Indeed it would have been preferable for plaintiff to have raised his concerns regarding discovery earlier in this lawsuit. However, because I agree with plaintiff that the parties and the court will not be substantially burdened by an extension of the response deadline, I am willing to permit plaintiff a slight reprieve by moving the response deadline by two weeks. Plaintiff's motion will be granted in part.

ORDER

IT IS ORDERED that plaintiff's motion to extend his summary judgment response deadline, dkt. #34, is GRANTED in part. Plaintiff's summary judgment response deadline is moved to February 25, 2009. Defendants may have until March 9, 2009, in which to serve and file a reply.

Entered this 5th day of February, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

