

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

WILLIE MOSBY,

Plaintiff,

v.

JULIE CAVEY,
SUZANNA RUSHFORD,
SUSAN BURKEHEIMER,
CURT SILBERSCHMIDT
and JAMES WOMMACK,

Defendants.

ORDER

08-cv-677-slc

Plaintiff Willie Mosby has filed a document titled “Plaintiff’s Responses / Reply Brief to Defendant James Wommack’s Answer and Affirmative Defenses,” in which he argues that each of defendant Wommack’s nineteen affirmative defenses are not valid. Attached to plaintiff’s submission are two exhibits: the first is a three-page document titled “Dental Treatment” and the second is a grievance plaintiff filed with the Dane County jail on March 9, 2007.

Fed. R. Civ. P. 12(b) permits a defendant 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 defendant. Although defendant Wommack has raised certain affirmative defenses in his answer he has 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

defendant Wommack's 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 has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(b)(6) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendant's 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 reply to defendant Wommack's answer and the attached exhibits (Dkt. #20) will be placed in the court's file but will not be considered.

Entered this 10th day of February, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge