

Let's at least try that
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TERRY L. ANDERSON,

Plaintiff,

v.

DANA DIEDRICH, RICHARD RAEMISCH,
GREGORY GRAMS, CAPTAIN RADTKE and
LORI ALSUM,

Defendant.

ORDER

10-cv-452-slc

Plaintiff Terry Anderson is proceeding in this action on his claims that defendants were deliberately indifferent to his depression in violation of the Eighth Amendment. Defendants answered the complaint and a preliminary pretrial conference has been scheduled for March 9, 2011. Now plaintiff has moved for permission to dismiss his case voluntarily and without prejudice.

When a motion for voluntary dismissal is filed after the defendants have filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants.

Plaintiff has two options.

(1) If he does not want to prosecute this case any longer, he can do nothing. In that event, the suit will be dismissed with prejudice. ("With prejudice" means that plaintiff can never bring the same claims against the same defendants); or

(2) If he objects to a dismissal of his case with prejudice, he may have until March 16, 2011, to write to the court to withdraw his motion for voluntary dismissal.

In order to allow plaintiff the opportunity to respond to this order, the preliminary pretrial conference set for March 9, 2011 will be canceled. If plaintiff chooses to withdraw his motion for voluntary dismissal, the pretrial conference will be rescheduled, so that new deadlines for bringing this case to resolution can be set.

ORDER

IT IS ORDERED that the preliminary pretrial conference set for March 9, 2011 is CANCELED. Plaintiff may have until March 16, 2011, in which to withdraw his motion for voluntary dismissal. If, by March 16, 2011, plaintiff fails to advise the court that he is withdrawing his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 2nd day of March, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge