

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

DUSTIN PHILLIP ERON,

Plaintiff,

v.

DR. BRET REYNOLDS,

Defendant.

ORDER

10-cv-698-slc

This prisoner civil rights case was transferred from the United States District Court for the Eastern District of Wisconsin on November 10, 2010. Defendant Bret Reynolds has answered the complaint and a preliminary pretrial conference order was issued on January 18, 2011. On August 22, 2011, defendant Reynolds filed a motion for summary judgment. Plaintiff Dustin Eron's brief in opposition to defendant's motion for summary judgment was due on September 12, 2011. Now plaintiff has filed a motion to dismiss this case without prejudice so that he may have the option of refiling this case once he has obtains an attorney.

When a motion for dismissal is filed after a defendant has 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 defendant Reynolds has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal of this defendant only on the condition that the dismissal is with prejudice, which means that plaintiff will be barred from bringing the excessive force claim in his current case in any future action, unless defendant Reynolds agrees to a dismissal without prejudice. If defendant Reynolds does not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that

1. Defendant Bret Reynolds may have until September 23, 2011, in which to advise plaintiff and the court whether he agrees to dismissal of this action without prejudice. If defendant Reynolds does not agree to such a dismissal, plaintiff may have until September 27, 2011 in which to either (1) withdraw his motion to dismiss or (2) advise the court that he has no objection to a dismissal of this case with prejudice. If, by September 27, 2011, plaintiff fails to request withdrawal of his motion to dismiss this case, this case will be dismissed with prejudice.

2. Briefing on defendant's motion for summary judgment is STAYED pending resolution of plaintiff's motion to dismiss with prejudice.

Entered this 14th day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge