

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

JOSE R. PADILLA,

Plaintiff,

v.

DR. DALIA SULIENE

Defendants.

ORDER

11-cv-425-bbc

In this civil action for monetary relief brought under 42 U.S.C. § 1983, plaintiff Jose Padilla is proceeding on a claim that defendant Dalia Suliene failed to provide him adequate medical care while he was incarcerated at the Columbia Correctional Institution. Defendant has filed a motion for summary judgment. Dkt. #66. Plaintiff has not responded to the motion or to defendant's proposed facts. Under most circumstances, plaintiff's failure to respond would require the court to accept all of defendant's proposed findings of fact as undisputed. Procedure to Be Followed on Motions for Summary Judgment, II.A, II.B and II.C and Memorandum to Pro Se Litigants Regarding Summary Judgment Motions, attached to Preliminary Pretrial Conference Order, dkt. #21. However, plaintiff has filed two motions with the court that raise questions about whether he still intends to respond to

defendant's motion for summary judgment.

Shortly after defendant filed her motion for summary judgment, plaintiff filed a motion for appointment of counsel, dkt. #73, contending that his imprisonment, mental illness and the complexity of the case have made it very difficult for him to litigate on his own. This is plaintiff's fifth motion for appointment of counsel. I denied plaintiff's previous motions because I concluded that plaintiff had not shown that he was incapable of prosecuting the case on his own. Plaintiff has provided no additional information or justification for appointment of counsel in his latest motion. Thus, I will deny it.

Plaintiff may have believed that filing his latest motion for appointment of counsel would toll his deadline for responding to defendant's motion for summary judgment. This was wrong. By March 29, 2012, plaintiff should have filed a brief in opposition, a response to defendant's proposed findings of fact and any additional proposed facts that plaintiff believed were necessary to respond to defendant's motion. However, now that I have decided that plaintiff is not entitled to the assistance of counsel, plaintiff may wish to file a response to defendant's motion for summary judgment. Therefore, I will give plaintiff a short deadline, until April 30, 2012, to file materials in opposition to defendant's motion.

The other motion that may be relevant to plaintiff's failure to respond to summary judgment is a motion regarding his ability to gain access to the courts, dkt. #65, which plaintiff filed shortly before defendant filed her motion for summary judgment. In that

motion, plaintiff contends that he has no access to the court because he has been denied a legal loan. Plaintiff's motion is vague and does not state whether his ability to pursue this case has been hampered and what tasks he wishes to accomplish regarding this lawsuit that have been prevented by the prison's denial of his legal loan request. Additionally, plaintiff's ability to file his motion for appointment of counsel since filing the motion related to his legal loan suggests that plaintiff has at least some resources available to him. Thus, plaintiff has provided insufficient evidence to support his motion and I will deny it.

That being said, it is not clear whether plaintiff's legal loan issues have contributed to his failure to respond to defendant's motion for summary judgment. If plaintiff has been unable to respond because of his inability to obtain materials, he should notify the court. In particular, if plaintiff believes he cannot file opposition materials by April 30, 2012 because he has been denied a legal loan, he should file an affidavit with the court explaining specifically whether he has paper, an envelope and postage or money in his trust fund account with which he can purchase those supplies. In addition, plaintiff should explain whether he has had any money in his trust fund account during the pendency of this lawsuit with which he could have purchased supplies. (Plaintiff has admitted that he receives a limited supply of paper and envelopes each week, so he should have sufficient supplies to file an affidavit.)

ORDER

IT IS ORDERED that

1. Plaintiff Jose Padilla's motion for appointment of counsel, dkt. #73, is DENIED without prejudice.

2. Plaintiff's motion for access to the courts, dkt. #65, is DENIED without prejudice.

3. Plaintiff may have until April 30, 2012 to file materials in opposition to defendant Dalia Suliene's motion for summary judgment. If plaintiff does not have sufficient supplies to file his opposition materials by that date, he should file an affidavit by April 30, 2012 explaining specifically why he lacks supplies. In particular, plaintiff should explain whether he has access to paper, an envelope and postage or money in his trust fund account with which he can purchase those supplies. In addition, plaintiff should explain whether he has had any money in his trust fund account during the pendency of this lawsuit with which he could have purchased supplies. If plaintiff fails to respond by April 30, 2012, I will address the merits of defendant's motion for summary judgment.

Entered this 17th day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge