

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

SCOTT A. KONITZER,
a/k/a Donna Dawn Konitzer,

Plaintiff,

v.

GARY HAMBLIN, *et al.*,

Defendants.

ORDER

11-cv-426-slc

In response to this court's March 22, 2013 order ruling on the then-pending motions and requests (dkt. 208), both sides filed a number of submissions. Defendants asked for a brief extension of their deadline (dkt. 209), then provided some evidence, including affidavits from defendants (dks. 215-219) and an amended set of proposed findings of fact in support of their motion for summary judgment (dkt. 214). Plaintiff filed a motion for an extension of time to file her response to defendants' summary judgment motion and a supporting affidavit (dks. 220-221) and a notice of objections and request for reconsideration of the court's March 22, 2013 order (dkt. 222).

Having stricken the trial date because of the delays getting the pending summary judgment motion briefed, and in light of defendants' amended proposed findings of fact filed on April 8, 2013, the court has no problem re-starting plaintiff's 30 day response deadline on April 8, 2013, so that plaintiff's response would be due May 8, 2013. Plaintiff actually asks for a May 20, 2013 deadline for reasons stated, *see* dkt. 220. At this point, 12 more days doesn't make much difference, so the court will give plaintiff what she asked for: her deadline to respond is **May 20, 2013**, with defendants' reply deadline moved to **June 3, 2013** (adding a few extra days to account for Memorial Day).

But this must be clear to plaintiff: the court does not view her proffered discovery requests as sufficiently necessary under Rule 56(d) to merit the requested extra time, and the

court predicts that plaintiff will not timely obtain all of the discovery she proffers that she intends to seek. Frankly, in light of defendants' report of Balsewicz's disciplinary record and their supplemental affidavits reporting what each of them knew and didn't know about Balsewicz prior to him attacking plaintiff, it seems that plaintiff's attempt to gather even more evidence at this juncture is misdirected. Plaintiff has her own testimony about what she said to whom about Balsewicz prior to the attack and she has Balsewicz's numerous (and conflicting) statements about what he said to whom about plaintiff prior to the attack. At this point, this likely is as good as the evidence is going to get for plaintiff, and she should focus her attention on presenting her facts and argument in response to defendant's summary judgment motion. If plaintiff does not have her summary judgment response in the mail stream by May 20, 2013, then defendants' motion for summary judgment is unopposed and under advisal to the court.

In her request for reconsideration, plaintiff asks the court to reconsider its denial of her request for counsel. Plaintiff's 13-page submission on reconsideration, taken as a whole, *itself* establishes that plaintiff either personally or with assistance from other inmates is capable of marshaling her thoughts and presenting cogent, articulate arguments. As this court has repeatedly observed, it is past time for plaintiff to apply her energy and efforts to defendants' pending summary judgment motion, so that we can move her lawsuit forward. The court is not going to appoint an attorney to represent plaintiff during motions practice because plaintiff has proved that she is capable of handling this phase of her lawsuit by herself. For what it's worth, if this case goes to trial, the court has a different view of plaintiff's ability to try this case to a jury and likely would appoint an attorney for her at that juncture, if we get there from here.

Plaintiff takes issue with most of the court's other rulings in its previous order; having considered all of plaintiff's arguments, I reaffirm the court's previous rulings.

ORDER

It is ORDERED that:

(1) Plaintiff's request to extent her deadline to file a response to defendants summary judgment motion, dkt. 220, is granted. Plaintiff's new, final deadline is May 20, 2013. Defendants' deadline to reply is June 3, 2013.

(2) Plaintiff's request for reconsideration, dkt. 222, is DENIED.

Entered this 22nd day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge