

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

DERROL DEE KIRBY, III

PLAINTIFF

v.

Civil No. 06-2168

JOHN ROTH, Ex-Chief of Police, Barling, Arkansas
Police Department; LARRY MERCHANT, next in charge
under Police Chief, Barling Police Department;
CITY OF BARLING; KEVIN DOUGAN,
Barling Police Department Patrolman; JOHN
BARBOR, Barling Police Department Patrolman

DEFENDANTS

ORDER

Now before the Court is Plaintiff's Motion to Reopen Case (Doc. 35). The Court will treat this as a Motion for Reconsideration of the Order (Doc. 34) granting Defendants' Motion to Dismiss for failure to prosecute and/or obey a Court Order. Defendants have filed no opposition to the Motion to Reopen.

Plaintiff's case was dismissed on August 27, 2008 (Doc. 34). Defendants filed a Motion to Compel answers to discovery (Doc. 28), which was granted by the Court. Defendants subsequently filed a Motion to Dismiss, stating the Order granting the Motion to Compel had not been followed. Plaintiff was represented by attorney Bruce Bennett during this time, and there was no response by Mr. Bennett to the Motion to Compel or the Motion to Dismiss. This Court granted the Motion to Dismiss (Doc. 34), and there was no response by Mr. Bennett. To date, there has been no contact between the Court and Mr. Bennett regarding this case.

Plaintiff filed his Motion to Reopen the case (Doc. 35) March 16, 2009. Phone calls between the Court and Mr. Bennett have clarified the nature of his Motion. Plaintiff states he answered the discovery provided to him by his attorney, Mr. Bennett, from the Defendants. Plaintiff

does not know if this discovery is the same discovery compelled by the Defendants in their Motions. Plaintiff states he was unaware his case was dismissed in August of 2008 until early 2009. Plaintiff found out about the status of his case from the Court, as he was unable to contact Mr. Bennett or receive any updates from his attorney regarding his case. Plaintiff subsequently filed the Motion to Reopen after finding his case had been dismissed.

It appears clear to the Court Plaintiff is willing to prosecute this action and obey the Orders of the Court. Apparently, a communication issue was unresolved between Plaintiff and his counsel which caused the earlier dismissal of Plaintiff case. However, Plaintiff states he is prepared to go forward in a *pro se* status with the case if reopened.

Thus, upon due consideration and for good cause shown, Plaintiff's Motion to Reopen Case (Doc. 35) is GRANTED.

The following are also hereby ORDERED:

(1) the parties shall have until and including September 18, 2009 to conclude discovery in this case;

(2) the Defendants should file any Motion for Summary Judgment on or before October 2, 2009;

(3) the Plaintiff should not respond to the Motion for Summary Judgment until so Ordered by the Court;

(4) Bruce Bennett is terminated as counsel in the above-styled action;

(5) the Clerk of Court is directed to substitute Derrol Dee Kirby, 3718 Dogwood Lane, Ozark, Arkansas 72949 for Bruce Bennett;

(6) the Clerk of Court is also directed to mail a copy of this Order to Mr. Kirby at the

address noted above.

IT IS SO ORDERED this 17th day of July, 2009.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE