

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARLYN J. EASTMAN, Personal)
 Representative of the Estate of the)
 Deceased, and LINO LOWELL)
 SPOTTED ELK, JR., Deceased,)
)
 Plaintiffs,)
)
 v.)
)
 COUNTY OF SHERIDAN, a Nebraska)
 Political Subdivision, LEVI MCKILLET,)
 in His Individual and Official Capacity,)
 and DOES 1-5, in Their Individual and)
 Official Capacities,)
)
 Defendants.)
 _____)

7:07CV5004

ORDER

This matter is before the court on defendants’ motion for summary judgment, Filing No. [110](#) and motion to dismiss, Filing No. [113](#). Plaintiff has moved to strike both of these motions as out of time. Filing No. [115](#). The March 13, 2009, Amended Progression Order provided that the parties should file these motions on or before April 30, 2009. The court notes that back in March 2009, Filing No. [99](#), this court denied a motion for summary judgment as moot but ruled that defendants could reassert the motion as to the new amended complaint. However, defendants have not filed anything in the last year. It is now April 5, 2010, and the pretrial conference is scheduled in one week and trial in one month. The court agrees that defendants’ motion for summary judgment and motion to dismiss are both untimely and will be denied.

THEREFORE, IT IS ORDERED that defendants' motion for summary judgment, Filing No. [110](#), and defendants' motion to dismiss, Filing No. [113](#), are both denied as untimely. It is further ordered that plaintiff's motion to strike, Filing No. [115](#), is granted.

DATED this 8th day of April, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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