

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHANNON WILLIAMS,)	
)	
Plaintiff,)	8:11CV446
)	
v.)	
)	
REYNOR RENSCH & PFIEFFER, et al.,)	MEMORANDUM AND ORDER
)	
Defendants.)	
)	

This matter is before the Court on remand from the Eighth Circuit. (See Filing No. [123](#).) For the reasons discussed below, the Court will reenter its November 26, 2012, Memorandum and Order, and plaintiff shall have until July 15, 2013, to file an amended complaint.

I. BACKGROUND

On March 29, 2012, this Court entered an Order and Judgment, which remanded this matter to the District Court of Douglas County, Nebraska (Filing Nos. [58](#) and [59](#)). On May 8, 2012, plaintiff filed a Notice of Appeal of the Court's March 29, 2012, Order and Judgment (Filing No. [65](#)). Almost two weeks later, plaintiff filed a Motion for Reconsideration of the Court's March 29, 2012, Judgment (Filing No. [69](#)).

After providing defendants with several extensions of time to respond to plaintiff's Motion for Reconsideration, the Court granted plaintiff's Motion for Reconsideration on November 26, 2012 (Filing No. [82](#)). In doing so, the Court re-opened the

case and gave plaintiff until December 20, 2012, to file an amended complaint. ([Id.](#)) The Court also gave defendants until January 22, 2013, to file an answer or other responsive pleading. ([Id.](#) at CM/ECF p. 2.)

On December 14, 2012, the Court entered a Memorandum and Order finding plaintiff's May 8, 2012, Notice of Appeal untimely and moot (Filing No. [83](#)). In that order, the Court also reminded plaintiff that he had until December 20, 2012, to file his amended complaint in accordance with the court's November 26, 2012, Memorandum and Order. ([Id.](#)) Plaintiff did not file an amended complaint by December 20, 2012. (See Docket Sheet.)

After the Court's December 14, 2012, Memorandum and Order, defendant Bellevue, Nebraska, filed a Motion to Dismiss (Filing No. [87](#)), plaintiff filed a Motion for Reconsideration (Filing No. [93](#)), plaintiff filed a Motion to Amend Complaint (Filing No. [101](#)), defendants filed a Motion to Strike plaintiff's Motion to Amend Complaint (Filing No. [104](#)), and plaintiff filed two Motions to Strike Pleadings (Filing Nos. [114](#) and [115](#)). All of these motions are currently pending before the Court.

II. REMAND

On May 24, 2013, the Eighth Circuit concluded that plaintiff's May 8, 2012, Notice of Appeal was a timely and effective appeal of this Court's March 29, 2012, Order and Judgment (Filing No. [123](#)). As a result, this Court lacked

jurisdiction to grant plaintiff's May 21, 2012, Motion for Reconsideration. (*Id.*) The Eighth Circuit then affirmed the Court's March 29, 2012, Order and Judgment and dismissed plaintiff's remaining challenges for lack of jurisdiction. (*Id.*) However, the Eighth Circuit also instructed the Court to "reenter its November 26, order granting the motion for reconsideration nunc pro tunc." (*Id.* at CM/ECF p. 2.)

III. ANALYSIS

In light of the Eighth Circuit's instructions on remand, the Court adopts the following analysis from its November 26, 2012, Memorandum and Order:

This matter is before the Court on plaintiff's Motion for Reconsideration (Filing No. [69](#)). In his motion, plaintiff requests that the Court reconsider its previous decision to remand this matter to the Nebraska state court, action the Court took at plaintiff's request (Filing No. [59](#)). Plaintiff states that he would like this matter to remain in this Court "so he can pursue all of [his] claims against the defendants now," including all of his federal claims (Filing No. [59](#) at CM/ECF p. 1).

In addition, since the filing of plaintiff's Motion for Reconsideration, defendants Stuck, Bruck, and Brazda have retained the Assistant United States Attorney as counsel (Filing No. [79](#)[]). Indeed, these defendants also seek reconsideration of the Court's previous decision to remand this matter because

defendants Stuck, Bruck, and Brazda "were federal officers acting under color of federal law for purposes of the actions alleged in Plaintiff's Complaints." (Filing No. [80](#) at CM/ECF p. 1.) This fact was apparently unknown to either plaintiff or defendants at the time plaintiff sought remand. (*Id.* at CM/ECF pp. 1-3.) The Court has carefully reviewed the record in this matter and finds that reconsideration is warranted. Because defendants Stuck, Bruck, and Brazda were federal officers during all relevant times, plaintiff's Second Amended Complaint contains allegations of federal law violations. This matter will therefore proceed as set forth below.

Further, because this Court lacked jurisdiction to reopen this matter until remand, the pending motions before the Court, which were filed in reliance upon the Court's improperly entered November 26, 2012, Memorandum and Order, will be denied without prejudice to reassertion. The Court elects not to strike any of the parties' pleadings at this time.

IT IS ORDERED:

1. Plaintiff's Motion for Reconsideration (Filing No. [69](#)) is granted. The clerk of the court is directed to re-open this matter.

2. The clerk of the court is directed to send a copy of this Memorandum and Order to the District Court of Douglas

County, Nebraska, and to take all necessary steps to inform that Court that the previous order to remand is no longer in effect.

3. Plaintiff shall have until July 15, 2013, in which to file an amended complaint containing all claims, including all federal claims, against all defendants. In the event that plaintiff fails to do so, this matter will proceed on the claims set forth in the Amended Complaint (Filing No. [22](#)) only.

4. Defendants shall file an answer or other responsive pleading no later than August 5, 2013.

5. Defendants' Motions to Withdraw (Filing Nos. [77](#) and [78](#)) are granted. Counsel for defendants is permitted to withdraw, as the Assistant United States Attorney has already made her appearance on behalf of defendants Bruck, Stuck, and Brazda.

6. The Motion to Dismiss filed by Bellevue, Nebraska, (Filing No. [87](#)), plaintiff's Motion for Reconsideration (Filing No. [93](#)), plaintiff's Motion to Amend Complaint (Filing No. [101](#)), defendants' Motion to Strike (Filing No. [104](#)), and plaintiff's

Motions to Strike Pleadings (Filing Nos. [114](#) and [115](#)), are denied in accordance with this Memorandum and Order.

DATED this 20th day of June, 2013.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

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