Bauer v. Glaser et al Doc. 26

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION

JEREMY BAUER,

Plaintiff,

vs.

ORDER GRANTING MOTION
FOR PROTECTIVE ORDER

JACOB GLASER,

Defendant.

Plaintiff, Jeremy Bauer, an inmate at the South Dakota State

Penitentiary, filed a pro se lawsuit under 42 U.S.C. § 1983. Docket 1. The

court screened Bauer's complaint under 28 U.S.C. § 1915A and directed

service of the complaint. Docket 9. Defendant moved for summary judgment,

arguing that Bauer failed to properly exhaust his administrative remedies and
that the case should be dismissed. Docket 16. Defendant now moves to stay

discovery until the court determines whether Bauer exhausted his
administrative remedies.

Pursuant to Rule 26(c), "the court has discretion to stay discovery on other issues until the critical issue has been decided." 8A Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, *Federal Practice and Procedure* § 2040 (3d ed.). A stay of discovery is within the district court's discretion and is reviewed by the appellate court for an abuse of that discretion. *Steinbuch v. Cutler*, 518 F.3d 580, 588 (8th Cir. 2008) (citing *Lakin v. Prudential Sec., Inc.*,

348 F.3d 704, 713 (8th Cir. 2003)); see also Maune v. Int'l Bhd. of Elec.

Workers, 83 F.3d 959, 963 (8th Cir. 1996) (upholding the district court's granting of a party's request to stay discovery). Because the exhaustion issue

may be dispositive, the court grants defendant's motion to stay discovery.

Thus, it is

ORDERED that defendant's motion for protective order (Docket 24) is granted. Discovery will be stayed until the court determines whether plaintiff has properly exhausted his administrative remedies. If summary judgment is denied, the stay on discovery will be lifted.

Dated August 31, 2016.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER UNITED STATES DISTRICT JUDGE