

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

MAURICE FITZPATRICK,

Plaintiff,

v.

KEITH CORNILLE,

Defendant.

ORDER

08-cv-710-bbc

Plaintiff Maurice Fitzpatrick is proceeding on his claim that defendant Keith Cornille retaliated against him for exercising his First Amendment right of free speech by complaining about the Madison Area Technical College's failure to grant him access to his student records. On August 31, 2009, defendant filed a motion for summary judgment. Dkt. #9. Plaintiff has twice sought to extend the time in which to file a response. Dkts. #18 & #21. He was granted one extension, dkt. #19, but was denied a second. Dkt. #23. Plaintiff's response was due October 19, 2009.

Instead of filing a response, plaintiff has filed a motion to voluntarily dismiss this case with prejudice. Dkt. #24. In his motion plaintiff states that he understands that dismissing this case with prejudice means that he will be barred from bringing the First Amendment

retaliation claim in his current case in any future case. Dismissal with prejudice is proper in this case because the litigation has reached the summary judgment stage. It would be unfair to defendant to allow dismissal of this case without prejudice at this late stage. Accordingly, under Fed. R. Civ. P. 41(a)(2) this case will be dismissed with prejudice.

ORDER

IT IS ORDERED that:

1. Plaintiff Maurice Fitzpatrick's motion to voluntarily dismiss his case with prejudice is GRANTED;
2. Defendant Keith Cornille's motion for summary judgment, dkt. #9, is DENIED as moot;
3. The clerk of court is directed to enter judgment DISMISSING this case with prejudice.

Entered this 22nd day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge