

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

REGGIE L. TOWNSEND,

Plaintiff,

v.

BRIAN SCHUELER,

Defendant.

ORDER

12-cv-896-bbc

This case is proceeding against remaining defendant Brian Schueler, who plaintiff Reggie Townsend says placed him in the same cell with a white supremacist and then refused to separate them for several weeks, in violation of the Eighth Amendment. (Plaintiff also alleges that defendant acted negligently under state law.) Defendant Schueler moved for summary judgment on February 25, 2014. Plaintiff has moved for dismissal of his case without prejudice so he can pursue it at another time.

When a motion for dismissal is filed after a defendant has filed an answer, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendant Schueler has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, which means that plaintiff will be barred from bringing the claim in his current case in any future action, unless

defendant Schueler agrees to a dismissal without prejudice. If defendant Schueler does not agree to a dismissal without prejudice, plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that

1. Defendant Brian Schueler may have until April 7, 2014, in which to advise plaintiff and the court whether he agrees to plaintiff's request for dismissal of this action without prejudice. If defendant Schueler does not agree to such a dismissal, plaintiff may have until April 14, 2014 in which to either (1) withdraw his motion to dismiss or (2) advise the court that he has no objection to a dismissal of this case with prejudice. If, by April 14, 2014, plaintiff fails to request withdrawal of his motion to dismiss this case, this case will be dismissed with prejudice.

2. Briefing on defendant's motion for summary judgment is STAYED pending resolution of plaintiff's motion to dismiss without prejudice.

Entered this 31st day of March, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge