

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

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DARREYLL T. THOMAS,

Plaintiff,

v.

MICHAEL REESE, *et al.*,

Defendants.

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ORDER

13-cv-597-wmc

Plaintiff Darreyll T. Thomas is proceeding on claims that deputies at the Dane County Jail used excessive force, battered and retaliated against him after he refused to sleep on a top bunk. Before the court is a motion from defendants to enforce a settlement agreement (dkt. #146), which the court will now grant, resulting in the dismissal of this lawsuit.

#### BACKGROUND

After both sides moved for summary judgment in February 2016, it became clear that there were disputed issues of fact with respect to plaintiff's excessive force claim that would require a trial. On May 10, 2016, therefore, this court recruited counsel Patrick Koenen of the law firm of Hinshaw & Culbertson in Appleton, Wisconsin, to represent him *pro bono* for the remainder of the case. The court also suggested that the parties consider mediating the case, as both sides had expressed early interest in doing so.

After a Preliminary Pretrial Conference was held in July 2016, the court heard nothing further from the parties until November 10, 2106, when plaintiff's recruited counsel moved to withdraw on the ground that plaintiff no longer wished counsel to represent him. (Dkt. #143.) Shortly thereafter, defendants filed a motion to enforce a settlement agreement that

was purportedly reached during a formal mediation between defendants, plaintiff and their respective counsel, including Hinshaw & Culbertson for plaintiff. Hearing nothing from plaintiff in response to counsel's motion to withdraw, the court granted that motion and ordered plaintiff to respond, on his own, to defendants' motion to enforce the settlement agreement. Plaintiff subsequently filed his opposition brief, and defendants filed a reply, making the motion to enforce the settlement fully briefed and ready for decision.

The parties' submissions confirm that the parties mediated this matter on October 10, 2016, at the Kettle Moraine Correctional Institution. Plaintiff attended in person, as did his recruited attorney, Patrick Koenen. A representative of defendants' insurer and defendants' counsel also attended. At the conclusion of the mediation, the parties signed a "mediation agreement."

That mediation agreement states as follows:

The parties have agreed to engage in mediation of their dispute with James R. Jansen as mediator. Pursuant to that mediation, the following agreement has been reached:

1. Payments will be made as follows: The defendants will pay \$25,000 to the trust account of Hunshaw & Culbertson.
2. The payments will be made on or before 10/31/2016.
3. Subrogation of claims will be handled as follows: The defendants will be responsible for healthcare or bills or claims for reimbursement regarding care rendered to the plaintiff on 7/28/12.
4. The payment described above is intended to be inclusive of all costs, disbursements and attorneys' fees whether compensatory, liquidated and/or punitive.
5. [left blank]
6. The parties will execute necessary closing documents, including an appropriate release and any necessary documents to terminate any pending litigation.

7. The plaintiff is not and never has been a Medicare beneficiary. (Dkt. #148-1.) Plaintiff, plaintiff's attorney, defendants' representative and defendants' attorney all signed this agreement.

Shortly thereafter, defense counsel mailed plaintiff a release for his signature and a proposed stipulation and order for dismissal. On October 18, 2016, defense counsel also produced a check for the full settlement amount and mailed it to plaintiff's attorney. Plaintiff now declines to sign the release or stipulate to dismissal.

### OPINION

A settlement agreement is a contract between the parties to the litigation, and as such, issues of "formation, construction, and enforcement of settlement agreements" are governed by state contract law. *Beverly v. Abbott Labs.*, 817 F.3d 328, 333 (7th Cir. 2016); *Carr v. Runyan*, 89 F.3d 327, 331 (7th Cir. 1996). Because the mediation agreement at issue here was formed in Wisconsin, that state's law applies. Even so, the question whether to enforce a settlement agreement in a pending case is generally committed to the district court's discretion. *Wilson v. Wilson*, 46 F.3d 660, 664 (7th Cir. 1995) ("[A] district court possesses the inherent or equitable power summarily to enforce an agreement to settle a case pending before it. . . . [T]he abuse of discretion standard is the proper guide for our review of a district court's decision to enforce a settlement agreement.").

Under Wisconsin law, "a settlement agreement is a contract by nature"; thus, "a valid settlement agreement requires an offer, an acceptance and consideration all resulting from a meeting of the minds." *Am. Nat. Prop. & Cas. Co. v. Nersesian*, 2004 WI App 215, ¶ 16, 277 Wis. 2d 430, 441, 689 N.W.2d 922, 927. Additionally, Wisconsin has a statute making

settlement agreements that occur out of court enforceable only if they are “in writing and subscribed by the party to be bound thereby or that party’s attorney.” Wis. Stat. § 807.05. When the terms of a settlement agreement are “plain and unambiguous,” courts must “construe the contract as it stands.” *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶ 14, 257 Wis. 2d 421, 432, 651 N.W.2d 345, 351. Moreover, “only mutual mistake or fraud will excuse a party from the terms of an executed, unambiguous written agreement.” *Nauga, Inc. v. Westel Milwaukee Co., Inc.*, 216 Wis. 2d 306, 315, 576 N.W.2d 573 (Ct. App. 1998). *See also In re Estate of Johnson*, 2006 WI App 19, ¶¶ 7-13, 289 Wis. 2d 100, 709 N.W.2d 88 (enforcing settlement agreement because it was in writing and subscribed with attorney’s typed initials).

Here, defendants argue that the mediation agreement should be enforced because it is clear, unambiguous, in writing, and signed by all of the parties. The court agrees. The mediation agreement satisfies all of the requirements under Wisconsin law for an enforceable settlement agreement. Although plaintiff apparently has not yet signed his release, the mediation agreement itself confirms that all parties involved understood the essential elements of the settlement agreement, including that execution of the outstanding release form and stipulation of dismissal were simply obligations that plaintiff had to perform to fully satisfy his obligations under the mediation agreement.

None of plaintiff’s arguments against enforcement of the mediation agreement undermine its validity. Specifically, plaintiff argues that the settlement agreement should not be enforced because: (1) the mediator improperly warned him about the risks of going to trial and about this court’s supposed lack of experience with personal injury cases; (2) the court improperly denied him leave to proceed on claims against high-ranking supervisory

officials; (3) the court should have granted his motion for summary judgment; and (4) he was denied access to video footage of the incident.<sup>1</sup>

As a threshold matter, plaintiff was well aware of each of these circumstances *before* he signed the mediation agreement. Thus, plaintiff cannot now claim that he received new information that changed his decision to accept the settlement terms. Moreover, none of these four arguments suggest that the settlement agreement was the product of mistake, fraud or coercion. Nor is there anything improper about the statements plaintiff attributes to the mediator, as mediators frequently and appropriately point out to litigants the risks of a trial, as well as the history and/or temperament of the applicable trial judge.

Plaintiff's remaining arguments are based on disagreements with previous court decisions, but plaintiff is simply mistaken in suggesting that by undoing the settlement agreement the court will (1) permit him to add new claims and defendants to the case, or (2) grant his motion for summary judgment. Rather, if the court were to void the settlement agreement, the result would be that this case would proceed to trial as scheduled and that plaintiff would have to present the case to a jury on his own, without the assistance of an attorney. Although plaintiff would likely then have access to the video footage of the incident, the court can conceive of no reason why this would be a valid basis for voiding the settlement agreement.

In sum, plaintiff agreed to settle this case for \$25,000. The settlement agreement is not only valid and enforceable, but appears fair under all the circumstances of this lawsuit. Accordingly, the court will exercise its discretion to enforce it.

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<sup>1</sup> Although plaintiff was not given a personal copy of the video footage, his recruited counsel received a copy of the video footage. The parties' submissions also suggest that the mediator viewed the video footage.

ORDER

IT IS ORDERED that defendants' "motion to enforce settlement agreement" (dkt. #146) is GRANTED and plaintiff's claims are DISMISSED WITH PREJUDICE in accordance with the terms of the mediation agreement signed by the parties. The clerk of court is DIRECTED to enter final judgment and close this case.

Entered this 3rd day of April, 2017.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge