IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

DEREK SUNDERMAN,)
Plaintiff,)
v.)) No. 05-2347–CM
WESTAR ENERGY, INC.,)
Defendant.)))

MEMORANDUM AND ORDER

This case is before the court on Defendant Westar Energy, Inc.'s Motion to Reconsider the Court's October 24, 2006 Memorandum and Order (Doc. 55). In the motion, defendant requests that the court expedite briefing given the court's deadline of November 13, 2006 to take plaintiff's deposition. The court notes that defendant has filed a notice to take plaintiff's deposition on November 17, 2006.

On October 24, 2006, this court denied defendant's motion to dismiss the case in part. The court gave plaintiff an opportunity to show that he has satisfied his obligations. The court also advised plaintiff that "[i]f plaintiff fails to demonstrate his remedial efforts, the court will consider this confirmation of defendant's present allegations." Plaintiff filed a response to the court's order under seal, but apparently did not give a copy of his response to defendant. The response makes clear that plaintiff has not paid the sanctions award directed by Magistrate Judge O'Hara on June 12, 2006.

Before this court is a serious issue: whether plaintiff's case should be dismissed because plaintiff has not paid his June 12, 2006 sanction, among other things. If the court finds that

dismissal is appropriate, it will be unnecessary for defendant to take plaintiff's deposition. In light

of the issue before the court and the procedural posture of the case, the court finds that expedited

briefing on defendant's motion to reconsider is appropriate. Plaintiff shall respond to defendant's

motion and provide defendant with a copy of plaintiff's sealed response to the court's order on or

before Monday, November 13, 2006. The court will not consider an untimely response.

Defendant may reply on or before Tuesday, November 14, 2006.

The court advises plaintiff that unless he demonstrates to the court that dismissal is not

appropriate for his continued failure to pay the sanction, as well as his other conduct in this

case, the court is prepared to dismiss this case without further notice. There is no need for

plaintiff to resubmit the information the court already has under seal.

IT IS THEREFORE ORDERED that briefing on Defendant Westar Energy, Inc.'s Motion

to Reconsider the Court's October 24, 2006 Memorandum and Order (Doc. 55) is expedited.

Plaintiff shall respond to defendant's motion and provide defendant with a copy of plaintiff's sealed

response to the court's order on or before Monday, November 13, 2006. Defendant may reply on or

before Tuesday, November 14, 2006.

Dated this 9th day of November 2006, at Kansas City, Kansas.

s/ Carlos Murguia

CARLOS MURGUIA

United States District Judge

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