

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY WAYNE ELROD,

Plaintiff,

vs.

CIVIL ACTION
No. 06-3115-SAC

OFFICER WALKER, et al.,

Defendants.

ORDER

On September 7, 2010, defendants filed a Motion to Dismiss or in the Alternative for Summary Judgment (Doc. 25). On March 24, 2010, the court granted plaintiff sixty days to file a response. When plaintiff failed to do so, defendants filed a motion on June 8, 2011, for an order granting their dispositive motion as uncontested (Doc. 46). Plaintiff thereafter sought additional time to file a response. On July 19, 2011, the court granted plaintiff an additional twenty days to file a response to avoid the court deciding defendant's motion to dismiss or for summary judgment as uncontested.

Before the court is plaintiff's motion to compel (Doc. 52) defendants to arrange for plaintiff to again view the DVD made of recordings by three security cameras of the incident of use of force at issue in this matter. In response, defendants indicate this request is now moot, as plaintiff was afforded another opportunity on August 8, 2011, to again view the DVD previously shown to plaintiff on September 24, 2010. To the extent plaintiff now

suggests additional footage is available from four other security cameras, the court agrees with defendants that this conclusory claim is speculative and untimely asserted.

Also before the court is plaintiff's motion for a stay of this action (Doc. 53) until plaintiff is released from prison and/or has secured attorney representation. Plaintiff cites his scheduled release date in ten months, and his recent efforts to hire an attorney to represent him in this matter. The court notes that no attorney has since filed an entry of appearance on plaintiff's behalf, and plaintiff has provided no further information to suggest that he has been successful or made significant progress towards retaining private counsel.

It is plainly evident on the face of the record that plaintiff has been granted extensions well beyond the time anticipated under federal court rules to file a response to defendants' motion to dismiss or for summary judgment. Finding no persuasive or compelling reason has been provided to warrant a stay of this matter until plaintiff's release from prison, the court denies plaintiff's motion for a stay. Absent an entry of appearance of counsel on plaintiff's behalf within twenty (20) days of the date of this order, or a substantial and credible showing by plaintiff within that time that an appearance by counsel on his behalf is imminent, the court will proceed to decide defendant's motion to dismiss or for summary judgment as an uncontested motion.

IT IS THEREFORE ORDERED that plaintiff's motion to compel (Doc. 52) is denied as moot, and that plaintiff's motion for a stay (Doc. 55) is denied.

IT IS SO ORDERED.

DATED: This 8th day of September 2011 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge