

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM MITCHELL,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-3111-JTM
)	
SGT. FREEMAN and)	
DAVID OAKS,)	
)	
Defendants.)	
_____)	

ORDER

Before the Court is Defendants’ Motion to Depose Plaintiff. (Doc. 17.) Plaintiff did not file a response to the motion and the time to do so has expired. D. Kan. Rule 6.1(d)(1). As such, the Court will treat the motion as uncontested. D. Kan. Rule 7.4.

Defendants wish to depose Plaintiff, who, at the time of filing of the motions, was allegedly incarcerated in Ellsworth, Kansas Correctional Facility. In subsequent pleadings, however, it appears that Plaintiff may now be in custody in the Douglas County Jail. *See e.g.*, Doc. 19, Defendant’s Motion to Compel at ¶ 4.

Prior to the filing of the present motion to depose Plaintiff, Defendants had

filed a Motion for Judgment on the Pleadings arguing that Plaintiff had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act of 1996, 42 U.S.C. § 1992(e)(a). (Doc. 16.) If that motion were granted, there would be no present need to depose Plaintiff, and for this reason, the Court has held up ruling on the motion to depose Plaintiff. It now appears that Plaintiff not only has failed to respond to pending motions, but may have failed to respond to Defendants' written discovery which has caused Defendants to file the recent motion to compel. Because it appears the Plaintiff is failing to respond to several matters in this case, the Court will go ahead and rule on the motion for leave to depose Plaintiff.

Fed. R. Civ. P. 30(a)(2) provides that “[a] party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2): . . . if the deponent is in confined in prison.” After reviewing the file in this case, the Court finds that an Order pursuant to Fed. R. Civ. P. 30(a)(2) is therefore appropriate.

Defendants' motion is **GRANTED** and Defendants are hereby allowed to take the deposition of Plaintiff at the Douglas County Jail, or at any other detention facility where Plaintiff may presently be incarcerated, pursuant to any rules and regulations established by the detention facility. While the Court is granting

Defendants' motion to depose Plaintiff, Defendant is free to refrain from immediately conducting any such deposition until there is a ruling on the pending motion for judgment on the pleadings and/or the recently filed motion to compel.

IT IS SO ORDERED.

A copy of this Order will be mailed to Plaintiff by the Clerk at both of the following addresses:

William Mitchell # 83263
Ellsworth Correctional Facility
1607 State Street
Ellsworth, KS 67439-0107

and

William Mitchell
Douglas County Jail
3601 East 25th Street
Lawrence, KS 66044

Dated at Wichita, Kansas on this 16th day of January, 2009.

s/ DONALD W. BOSTWICK
DONALD W. BOSTWICK
United States Magistrate Judge