

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ERIC HURD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 09-CV-03222-JWL/KGS
)	
)	
BILL MCBRYDE and ROB GANT)	
)	
Defendants.)	
)	
_____)	

MEMORANDUM AND ORDER

Plaintiff Eric Hurd filed this action against defendants Bill McBryde and Rob Gant (“the defendants”) for alleged violations of his constitutional rights while a prisoner at Seward County Detention Center in Liberal, Kansas. Mr. Hurd seeks redress under 28 U.S.C. § 1983. On March 1, 2010, the defendants filed a Motion for Summary Judgment (doc. #19), alleging, amongst other defenses, an entitlement to qualified immunity. The matter is presently before the Court on a motion by Mr. Hurd to stay the Court’s decision on the Motion for Summary Judgment until such time as Mr. Hurd may access a law library or receive the assistance of an individual trained in the law (doc. #27). For the reasons explained below, the Court conditionally grants Mr. Hurd’s request for an extension of time.

According to Mr. Hurd, his present imprisonment prevents him from accessing a law library or receiving the assistance of counsel, which he in turn believes inhibits his

access to the courts. Construing his request for a “stay” as a request for an extension of time to file a response to the Motion for Summary Judgment, the defendants have not objected to a “reasonable extension of time,” provided that Mr. Hurd is prevented from instigating other proceedings or filing additional pleadings. The defendants also requested that Mr. Hurd not be permitted to conduct any additional discovery, pursuant to their Motion to Stay Discovery filed March 10th, 2010. On March 29th, Magistrate Judge Sebelius denied the defendants’ Motion to Stay Discovery.

In light of the agreement among the parties that Mr. Hurd should be permitted a reasonable extension of time to file a response to the Motion for Summary Judgment, the Court concludes that Mr. Hurd should be permitted an extension until further order of the Court in order to ensure he has access to a law library or to the assistance of counsel. However, if Mr. Hurd undertakes any discovery in this case or initiates or proceeds with any other litigation, thus indicating to the Court that he has access to a law library or counsel, then his response to the defendants’ Motion for Summary Judgment will be due thirty days after any such discovery is initiated or seven days after any other litigation is initiated or proceeded with. In any event, Mr. Hurd shall provide written status reports to the Court, the first of which shall be due May 3, 2010 and then every thirty days thereafter, informing the Court and counsel of his access to a law library or counsel.

IT IS SO ORDERED.

Dated this 5th day of April, 2010, in Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge