

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CLINT ANTHONY AVANT,

Plaintiff,

v.

Case No.: 2:21-cv-660-SPC-KCD

JOBIE BATES,

Defendant.

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**ORDER**<sup>1</sup>

This matter comes before the Court on sua sponte review of the file. On March 9, 2023, the only remaining Defendant Jobie Bates moved for summary judgment. ([Doc. 87](#)). For the following reasons, the Court denies Bates' motion without prejudice.

This is an excessive force case. Only a few days before Bates moved for summary judgment, Plaintiff Clint Avant moved for an extension of time to complete discovery. ([Doc. 86](#)). Avant is a pro se prisoner, who has been locked in segregated confinement with no access to any law or case materials. ([Doc. 86 at ¶ 1](#)). His prison has not allowed him to watch the video of his arrest and the alleged excessive force. ([Doc. 86 at ¶ 2](#)). Avant states, "The Plaintiff does

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not have the ability to file for summary judgment at this time! As he does not have all discovery material requested!” (Doc. 86 at ¶ 5). Over Bates’ objection, Magistrate Judge Kyle Dudek granted Avant’s motion. (Doc. 91). He extended the deadlines to complete discovery, meet and confer, and move for summary judgment. (Doc. 91).

Fed. R. Civ. P. 56(d) allows the Court to deny a motion for summary judgment if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. And courts must liberally construe pro se filings. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Given the substance of Avant’s Motion for Extension of Time (Doc. 86), the Court finds it appropriate to deny Bates’ Motion for Summary Judgment (Doc. 87) without prejudice under Fed. R. Civ. P. 56(d)(1).

Accordingly, it is now

**ORDERED:**

Defendant Jobie Bates’ Dispositive Motion for Final Summary Judgement (Doc. 87) is **DENIED without prejudice**.

**DONE and ORDERED** in Fort Myers, Florida on March 22, 2023.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record