

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON

CIVIL ACTION NO. 09-235-KSF

MARCIA SMITH &  
STEPPING STONE GERMAN SHEPARD RESCUE, INC.

PLAINTIFF

V.

**OPINION & ORDER**

BOURBON COUNTY ANIMAL CONTROL,  
JESSIE FLORENCE, individually and in his capacity as  
an officer of Bourbon County Animal Control

DEFENDANTS

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This matter is before the Court on the motion of the defendants, Bourbon County Animal Control and Jesse Florence (collectively, “Defendants”), to dismiss the claims against them pursuant to Federal Rule of Civil Procedure 41(b) for the failure of the plaintiffs to prosecute their claims. The plaintiffs, Marcia Smith and Stepping Stone German Shepard Rescue, Inc. (collectively, “Plaintiffs”), filed a timely response. Defendants did not reply to Plaintiffs’ response and the time for doing so has expired. The Court, having reviewed the record and being otherwise sufficiently advised, will deny the motion.

This case was initially filed in the Bourbon Circuit Court on June 23, 2009. It was subsequently removed to this Court. A Scheduling Order was entered on September 23, 2009, setting a trial date and the deadlines for disclosure of experts, discovery and pretrial filings.

Rule 41(b) provides that if a plaintiff fails to prosecute her case, a defendant may move to dismiss the action or any claim against it. Defendants argue that Plaintiffs have failed to prosecute

their case because they have not taken discovery and have filed no dispositive motions. Plaintiffs contend that no discovery was necessary for them to develop their case and that they are ready to proceed to trial. There is no requirement that a plaintiff take depositions, make requests for interrogatories or file dispositive motions. Given Plaintiffs' timely response and their affirmation that they are ready for trial, the Court must deny Defendants' motion.

Accordingly, **IT IS ORDERED** that the motion of the defendants to dismiss is **DENIED**.

This July 28, 2010.



**Signed By:**

Karl S. Forester KSF

**United States Senior Judge**