

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JAMES E. RICKS, JR.,
ADC #116011

PLAINTIFF

v.

5:08CV00055HLJ

ED ADAMS, et al.

DEFENDANTS

ORDER

This matter is before the Court on defendant King's motion and amended motion to stay the evidentiary hearing and his motion to quash plaintiff's Rule 31 depositions upon written questions (DE ##83, 84, 85). Plaintiff has filed a response in opposition to defendant's motion to stay (DE #86).

In support of his motion, defendant King states his last day of employment with the W.C. "Dub" Brassell Detention Center was December 29, 2008, after which time he joined the United States Army for a term of three years. Defendant King is currently undergoing military training in Arizona, and provides a letter from his commanding officer which states that due to his training schedule he can not be released at this time to attend a hearing in this matter. Pursuant to 50 App. U.S.C. § 501, defendant King asks for a temporary suspension of the judicial proceedings under the Servicemembers Civil Relief Act of 2003. In his amended motion, defendant King further asks the Court to stay the evidentiary hearing in this matter until defendant King is relieved from active military duty.

In his response, plaintiff asks the Court to deny defendant's motion, stating a stay will deny his due process rights. Plaintiff also asks that defendant King submit a sworn statement in conjunction with the written questions plaintiff submitted to him, and that such statement be used

in place of defendant's presence at the trial.

In the motion to quash, defendant King states that if the Court grants his requested stay, such would stay any discovery requests. Defendant also notes the discovery deadline of September 17, 2008 has passed, and that defendants have properly responded to all previous discovery requests propounded by the plaintiff.

The purpose of the Servicemembers Civil Relief Act is "to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 App. U.S.C.A. § 502(2). Pursuant to § 522 of the Act, an application for a stay of any civil action or proceedings in which the plaintiff or defendant is in the military service, shall be accompanied by a letter from the applicant's commanding officer stating that the member's current military duty prevents his appearance. Based on such, the Court finds that defendant King's motions to stay and to quash the written depositions questions should be granted.

However, the Court further notes that § 525 of the Act provides "if the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court." Therefore, the Court finds that any stay shall not apply to plaintiff's claims against codefendant Mike Hurst. Accordingly,

IT IS, THEREFORE, ORDERED that defendant King's motion and amended motion to stay the evidentiary hearing (DE ##83, 84) are hereby GRANTED in part, to the extent that such a stay shall be applied only to defendant King.

IT IS FURTHER ORDERED that defendant King's motion to quash (DE #85) is hereby

GRANTED.

IT IS SO ORDERED this 23rd day of July, 2009.

Henry I. Jones, Jr.
United States Magistrate Judge