

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

J.C., a minor, by and through
her parent, LEONTYNATE CAREY,

Plaintiff,

vs.

MUSCOGEE COUNTY SCHOOL BOARD,
et al.,

Defendants.

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CASE NO. 4:13-CV-468 (CDL)

O R D E R

Defendants served interrogatories, document requests, and a deposition notice on Plaintiff Leontynate Carey. Carey did not produce any documents in response to the document requests, and although she appeared for a deposition, she refused to answer questions. Carey also failed to respond to some interrogatories and provided incomplete answers to the rest. Defendants attempted to confer in good faith with Carey, but she did not provide the requested discovery responses, so Defendants filed a Motion to Compel (ECF No. 22).

Carey did not respond to Defendants' Motion to Compel, and she did not offer any reason for her failure to respond to the discovery requests. Instead, Carey filed a motion for appointment of counsel, explaining that she did not wish to proceed without an attorney. That motion was denied. Order Den. Mot. for Appointment of Counsel Sept. 26, 2014, ECF No. 24.

If Carey wants to proceed in this action, Carey must comply with her discovery obligations. Carey shall respond to Defendant's interrogatories and document requests by October 31, 2014. Carey shall submit to a deposition by November 21, 2014. **If Carey fails to comply with this Order, this action will be dismissed under Federal Rule of Civil Procedure 37(b)(2)(A)(v).**

Defendants seek sanctions in the amount of \$543.66 based on Carey's failure to respond to Defendants' discovery requests. It is not clear from Defendants' briefs whether this amount represents the cost of the unfinished deposition or the cost of bringing the Motion to Compel. On one hand, Defendants reference Federal Rule of Civil Procedure 37(a)(5) in their reply brief, suggesting that they are seeking the costs of bringing the Motion to Compel. On the other hand, Defendants state that the sanctions they seek represent deposition costs and attorney's fees.

If Defendants are seeking the cost of the unfinished deposition, such a sanction is authorized but not required under Federal Rule of Civil Procedure 37(d) (stating that the Court may order sanctions if a party "fails, after being served with proper notice, to appear for that person's deposition"). The Court declines to order this sanction at this time. But if Defendants are seeking the cost of bringing the Motion to Compel, "the court *must*, after giving an opportunity to be

heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A) (emphasis added). The present record does not clearly reflect the amount of expenses incurred in bringing the Motion to Compel, and it provides no evidence from which the Court can determine whether those expenses were reasonable. So the Court cannot award sanctions based on Rule 37(a)(5)(A) at this time but may reconsider this decision if Defendants file a motion for sanctions with supporting documentation. Carey, of course, will have an opportunity to respond to any motion for sanctions and explain why such an award would be unjust.

In summary, Defendants' Motion to Compel is granted, and Defendants' request for sanctions is denied. Carey shall respond to Defendant's interrogatories and document requests by October 31, 2014. Carey shall submit to a deposition by November 21, 2014. **If Carey fails to comply with this Order, this action will be dismissed under Federal Rule of Civil Procedure 37(b)(2)(A)(v).**

IT IS SO ORDERED, this 10th day of October, 2014.

S/Clay D. Land

CLAY D. LAND, CHIEF JUDGE
UNITED STATES DISTRICT COURT