

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHAEL E. McKINZY, SR.,)
)
Plaintiff,)
)
v.)
)
BNSF RAILWAY RAILROAD,)
)
Defendant.)

No. 08-2365-CM

ORDER

This case is before the court on Plaintiff’s Objections and Motion for Review by District Judge of Magistrate Judge’s Order Denying Plaintiff’s Protective Order and Granting Defendant’s Motion to Compel Plaintiff to Supplement Plaintiff’s Discovery Responses Pursuant [to] Fed. R. Civ. P. 72 (Doc. 91).

The standard of review under which a district court reviews a magistrate judge’s decision on a nondispositive motion is the “clearly erroneous or contrary to law standard.” *First Union Mortgage Corp. v. Smith*, 229 F.3d 992, 995 (10th Cir. 2000) (citing 28 U.S.C. § 636(b)(1)(A)). This standard requires the district court to affirm the magistrate judge’s decision unless it is “left with the definite and firm conviction that a mistake has been committed.” *Burton v. R.J. Reynolds Tobacco Co.*, 200 F.R.D. 661, 667 (D. Kan. 2001) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). Magistrate judges have broad discretion to manage the pretrial docket and control discovery. *First Sav. Bank, F.S.B. v. First Bank Sys., Inc.*, 902 F. Supp. 1356, 1365–66 (D. Kan. 1995).

Given the circumstances of this case, Judge O’Hara’s order granting defendant’s motion to compel discovery and denying plaintiff’s motion for a protective order was not clearly erroneous. In

fact, the order furthers the interests of justice. The court agrees with Judge O’Hara’s decision to consider the merits of defendant’s motion to compel despite the fact it was filed two days late. Defendant maintained that it did not receive the responses until more than two weeks after they were sent, and defendant informed plaintiff that it believed his discovery responses were inadequate before the time to file the motion to compel expired. Judge O’Hara’s decision to consider the motion on the merits was not clearly erroneous. Nor was his decision to grant the motion. Although plaintiff did not provide any substantive opposition to defendant’s motion to compel—beyond his claim that defendant’s objections were untimely, Judge O’Hara reviewed plaintiff’s discovery responses and properly determined that plaintiff’s responses were inadequate.

As Judge O’Hara pointed out in his order, plaintiff made *no* attempt to meet the standard for a protective order stated in Fed. R. Civ. P. 26(c) and failed to indicate that he attempted in good faith to confer with defendant before he filed the motion, as is required by Rule 26(c). Where, as here, the plaintiff proceeds *pro se*, the court construes the *pro se* pleadings liberally. *Hall v. Doering*, 997 F. Supp. 1445, 1451 (D. Kan. 1998) (citing *Hughes v. Rowe*, 449 U.S. 5, 9–10 (1980)). On the other hand, a plaintiff’s *pro se* status does not relieve him from complying with this court’s procedural requirements. *Barnes v. United States*, 173 F. App’x 695, 697 (10th Cir. 2006) (citations omitted); *see also Santistevan v. Colo. Sch. of Mines*, 150 F. App’x 927, 931 (10th Cir. 2005) (holding that a *pro se* litigant must follow the same rules of procedure as other litigants). Based on the record, Judge O’Hara’s order denying plaintiff’s motion for a protective order was not clearly erroneous.

The court finds that Judge O’Hara’s decision is supported by the record. Accordingly, plaintiff’s motion is overruled.

Defendant requests its cost and fees associated with responding to this motion. The court declines to assess fees and costs to plaintiff as a sanction for this motion. However, this court acknowledges its power, under Rule 11 and otherwise, to impose such sanctions should the circumstances merit it. Fed. R. Civ. P. 11; *Stafford v. United States*, 208 F.3d 1177, 1179 (10th Cir. 2000). Plaintiff is cautioned to take care that his filings do not merit the imposition of sanctions in the future. *See Andrews v. Heaton*, 483 F.3d 1070, 1077 (10th Cir. 2007).

IT IS THEREFORE ORDERED that Plaintiff's Objections and Motion for Review by District Judge of Magistrate Judge's Order Denying Plaintiff's Protective Order and Granting Defendant's Motion to Compel Plaintiff to Supplement Plaintiff's Discovery Responses Pursuant [to] Fed. R. Civ. P. 72 (Doc. 91) is denied.

Dated this 10th day of December 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge