

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

ASHLEY MAE WEBB,)	
)	
Plaintiff,)	Civil Action No. 5:09-CV-314-JMH
)	
v.)	
)	MEMORANDUM OPINION AND ORDER
JESSAMINE COUNTY FISCAL)	
COURT, et al.,)	
)	
Defendants.)	

** ** ** ** **

Plaintiff has filed a Motion to File Surreply in Opposition to Motion for Summary Judgment [Record No. 74]. Defendants have filed a Response [Record No. 75]. Plaintiff has filed a Reply [Record No. 76]. This matter is now ripe for decision.

If a party has the opportunity to respond to a motion, a Court may not make a ruling on that motion relying on new reasons and evidence submitted in a reply without allowing the adverse party the opportunity to respond. *Seay v. TVA*, 339 F.3d 454, 482 (6th Cir. 2003)(citation omitted). Defendants have raised new legal arguments regarding the standard for determining whether Plaintiff objectively suffered "a deprivation of medical care that is sufficiently serious" and submitted portions of deposition testimony not previously tendered to the Court. See [Record No. 73, p. 3-5] (arguing that Plaintiff's labor would not have been obvious to a layman causing it to be an objectively, sufficiently serious deprivation); [Record No. 73-3, p. 17, 25] (additional deposition testimony of Defendant Watts). While the better

practice is to attach the proposed sur-reply as an exhibit to the motion so that the Court may properly evaluate it, this Court recognizes Plaintiff's Reply in further support of her Motion to File Surreply in Opposition to Motion for Summary Judgment includes all the arguments Plaintiff would have made if Plaintiff had attached a separate surreply to her motion. [Record No. 76, p. 11-12] ("In fact, the Plaintiff has now presented to the Court all of the arguments she would make if the Court were to grant her motion for leave but [sic] virtue of her meeting the demands of the Defendants for more specificity"). Thus, this Court shall grant Plaintiff's Motion to File Surreply in Opposition to Defendants' Motion for Summary Judgment [Record No. 74] and recognize Plaintiff's Reply in further support of her current motion as Plaintiff's Sur-reply in opposition to Defendants' Motion for Summary Judgment.

Accordingly, **IT IS ORDERED** that Plaintiff's Motion for Leave to File Surreply [Record No. 74] is **GRANTED** and this Court recognizes Plaintiff's arguments from Plaintiff's Reply [Record No. 76] as Plaintiff's Sur-reply in opposition to Defendants' Motion for Summary Judgment [Record No. 65].

This the 28th day of June, 2011.



Signed By:

Joseph M. Hood 

Senior U.S. District Judge