

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

CIVIL ACTION NO. 12-CV-13-KSF

BEN AFSHARI

PLAINTIFF

v.

**OPINION & ORDER**

BEAR ARCHERY, INC

DEFENDANT

\* \* \* \* \*

This matter is currently before the Court upon the motions of the defendant, Bear Archery, Inc., to dismiss [DE #47] and for a second extension of time to file its responsive Markman brief [DE #48]. In support of the motion to dismiss, Bear Archery notes that despite the Court's Scheduling Order of November 6, 2012 [DE #34], the plaintiff, Ben Afshari, failed to file his initial Markman brief, which was due on January 15, 2014. Thereafter, on January 30, 2014, the Court ordered Afshari to file his initial Markman brief within 15 days, along with a motion to file a late brief stating the reasons for his failure to file it timely [DE# 43]. On February 10, 2014, Afshari did file his initial Markman brief, but failed to file a motion for late filing [DE #45]. Defendant's motion for extension of time requests that it's responsive Markman brief not be due until after a ruling is made on the pending motion to dismiss.

Bear Archery moves to dismiss this action on the grounds that Afshari has not complied with the Court's order [DE #47]. On February 27, 2014, Afshari tendered to the Clerk's Office his "Response to Bear Archery's Motion to Dismiss Filed on Feb 24<sup>th</sup> and 2<sup>nd</sup> Motion for Extension of Time Filed on Feb 25<sup>th</sup> 2014." Because the tendered Motion and attached exhibit contain personal information related to minor children, the Clerk's Office forwarded these filings to the Court for

review. Upon review and pursuant to Rule 5.2 of the Federal Rules of Civil Procedure, the Court finds that the documents should be filed under seal. Additionally, the Court finds that Afshari has set forth good cause for his failure to comply with the Court's previous Order. In light of the lenient standards typically afforded to *pro se* litigants, the Court will deny Bear Archery's motion to dismiss. However, Afshari is cautioned that any future failures to fully comply with Court orders may result in dismissal of this action.

Accordingly, the Court being fully and sufficiently advised, **IT IS HEREBY ORDERED** as follows:

- (1) Bear Archery's motion to dismiss [DE #47] is **DENIED**;
- (2) Afshari's tendered Response and Exhibit shall be **FILED UNDER SEAL**;
- (3) the Clerk shall **MAIL** a sealed copy of the sealed documents to Bear Archery's counsel;
- (4) Bear Archery's second motion for extension of time to file its responsive Markman brief [DE #48] is **GRANTED** and the brief shall be due thirty (30) days from entry of this Order; and
- (5) Plaintiff may file a reply brief by May 8, 2014.

This February 27, 2014.



**Signed By:**

**Karl S. Forester KSF**  
**United States Senior Judge**