

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

WILLIAM H. WILLIAMS

PLAINTIFF

v.

CIVIL ACTION NO. 3:16-CV-00236-CRS

BAPTIST HEALTHCARE SYSTEM, INC.
d/b/a BAPTIST HEALTH LEXINGTON

DEFENDANT

MEMORANDUM OPINION

This case involves a dispute between plaintiff William H. Williams (“Williams”) and defendant Baptist Healthcare System, Inc. d/b/a Baptist Health Lexington (“BHL”) arising from BHL’s failure to admit Williams for care on April 4, 2015. ECF No. 1-1, p. 2. BHL moved for summary judgment, Williams responded, and BHL subsequently replied. ECF Nos. 76, 84, 88. Now, Williams moves to strike portions of BHL’s reply, or alternatively, moves for leave to file a sur-reply. ECF No. 90. For the reasons set forth below, Williams’ motion for leave to file a sur-reply will be granted.

Williams argues that BHL raised the following arguments for the first time in its reply brief:

- (1) Williams’ emotional distress claim should be dismissed because there is no medical expert opinion testimony linking Williams’ symptoms of anxiety to his rejection by BHL;
- (2) Williams’ emotional distress claim should be dismissed because a medical expert is required to opine on emotional distress damages;
- (3) Williams’ emotional distress claim should be dismissed because emotional distress damages may only be awarded where a plaintiff establishes distress affecting everyday life and requires significant treatment; and
- (4) Williams’ punitive damages claim should be dismissed because compensable damages are necessary before a party may recover punitive damages in an EMTALA case.

The Sixth Circuit has held that “[a]lthough the Federal Rules of Civil Procedure do not expressly permit the filing of sur-replies, such filings may be allowed in the appropriate circumstances, especially ‘[w]hen new submissions and/or arguments are included in a reply brief, and a nonmovant’s ability to respond to the new evidence has been vitiated.’” *Key v. Shelby County*, 551 Fed. Appx. 262, 265 (6th Cir. 2014) (citing *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 481 (6th Cir. 2003)).

In the present case, BHL made qualitatively different arguments concerning emotional distress injuries and punitive damages in the motion for summary judgment and the reply brief. Thus, the court will allow Williams to file a sur-reply addressing solely these two issues. The sur-reply shall be filed no later than April 23, 2018.

For the reasons stated above, Williams’ motion for leave to file a sur-reply will be granted. An order will be entered in accordance with this memorandum.

April 10, 2018

A handwritten signature in black ink, appearing to read "Charles R. Simpson III", is written over a faint circular seal of the United States District Court.

**Charles R. Simpson III, Senior Judge
United States District Court**