

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIKHYL PARNELL	*	CIVIL ACTION
VERSUS	*	NO. 20-1739
LBV MARINE, LLC, ET AL.	*	SECTION "E" (2)

ORDER AND REASONS

Defendants LBV Marine, LLC and L&L Marine Transportation, Inc.'s Motion to Compel Discovery and for Attorney's Fees and Costs (ECF No. 14) is pending before me in this matter. The motion was scheduled for submission on March 31, 2021. As of this date, Plaintiff has not filed an Opposition Memorandum, and the deadline for same expired on Tuesday, March 23, 2021. *See* E.D. La. L.R. 7.5.

Defendants seek to compel the deposition of Plaintiff Mikhyl Parnell after Plaintiff received adequate notice of his deposition scheduled on March 2, 2021. ECF No. 14-1, at 4–5. Plaintiff failed to appear at the deposition and did not communicate to his attorney at the time or opposing counsel that he would not appear. *Id.* at 1. Defendants also seek reimbursement for the cost of travel to and from the deposition, time for preparation of certificate of non-appearance, cost of transcript of certificate of non-appearance, and costs and fees in preparation for this Motion. ECF No. 14-11, at 2–3.

Rule 37(d) provides that the Court may "order sanctions if . . . a person designated under Rule 30(b)(6) . . . fails, after being served with proper notice, to appear for that person's deposition." Fed. R. Civ. P. 37(d)(1)(A)(i). "Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or

other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3). “Awardable sanctions under [Rule 37(d)] are entirely flexible depending on the circumstances of each case.” *Shumock v. Columbia/HCA Healthcare Corp.*, No. 99-1777, 1999 WL 1021829, at *1 n. 4 (E.D. La. Nov. 10, 1999) (citing *Nat'l Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976)). The actions triggering Rule 37(d) do not need to be willful and may be negligent; however, the level of culpability might inform the appropriate sanction. *Coane v. Ferrara Pan Candy Co.*, 898 F.2d 1030, 1032 (5th Cir. 1990) (citations omitted).

Having considered the record, the written submissions of counsel, the lack of Opposition Memoranda, and the applicable law,

IT IS ORDERED that the Motion to Compel Discovery and for Attorney’s Fees and Costs is GRANTED IN PART AND DENIED IN PART WITHOUT PREJUDICE;

IT IS FURTHER ORDERED that Plaintiff Mikhyl Parnell is compelled to appear for a Rule 30 deposition within 14 days of the date of this Order, or as otherwise agreed upon by the parties;

IT IS FURTHER ORDERED that Plaintiff Mikhyl Parnell pay Defendants \$200.00 reflecting the invoiced costs for the transcript (ECF No. 14-6, at 9);

IT IS FURTHER ORDERED that Defendants are entitled to an award of the reasonable attorney's fees and costs incurred in bringing this Motion for Sanctions and for attending the deposition of Mikhyl Parnell on March 2, 2021, and that Mr. Parnell shall be responsible for such payment. In connection with this award, the parties are to do the following:

- (1) If the parties are able to agree to a reasonable amount of attorney’s fees and costs, Plaintiff shall pay that amount;

(2) If the parties do not agree to a resolution, Defendants may, within 14 days of this Order, file a Motion for Fees and Costs pursuant to Rule 37, which filing shall include (a) an affidavit attesting to their attorney's education, background, skills and experience; (b) sufficient evidence of rates charged in similar cases by other local attorneys with similar experience, skill and reputation and (c) a verified, contemporaneous report reflecting the date, time involved, and nature of the services performed, as required by Local Rule 54.2; and

(3) Plaintiff shall, within 7 days of the filing of Defendants' Motion, file any opposition pertaining to the imposition or the amounts requested by Defendants.

New Orleans, Louisiana, this 7th day of April, 2021.


DONNA PHILLIP'S CURRAULT
UNITED STATES MAGISTRATE JUDGE