

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

ALICIA JOHNSON BUTLER

CIVIL ACTION NO. 6:16-cv-01718

VERSUS

JUDGE DOHERTY

HOME DEPOT U.S.A., INC, ET AL

MAGISTRATE JUDGE HANNA

ORDER AND REASONS

Currently pending before this Court is the plaintiff's Motion to Continue Hearings on the Defendants' Motion for Summary Judgment and Motion in Limine [Rec. Doc. 47]. The motion is opposed. For the following reasons, the plaintiff's motion is granted.

On December 14, 2016, this case was removed from the Fifteenth Judicial District Court for the Parish of Lafayette on the basis that the District Court has diversity jurisdiction. The Court determined that the requirements for diversity jurisdiction were satisfied and held a telephone scheduling conference to select a trial date and a pre-trial conference date. Based on the discussion in the telephone scheduling conference, a scheduling order was issued.¹

The scheduling order set the jury trial for this matter on November 27, 2017 and the pre-trial conference on November 9, 2017. The scheduling order also set

¹Rec. Doc. 18

various pre-trial deadlines including the plaintiff's Expert Information/Reports due on May 15, 2017, and the overall Discovery Deadline was July 12, 2017. On August 11, 2017, after these deadlines lapsed, the defendants filed a Motion In Limine² and a Motion for Partial Summary Judgment³. On August 18, 2017, the plaintiff filed a Motion to Continue Trial⁴ because her condition deteriorated and she needed an additional surgery, which she had on August 15, 2017. The defendants opposed the motion. In opposition, the defendants argued that the plaintiff's decision to undergo surgery should not permit discovery to be reopened and allow the plaintiff to supplement her expert reports. After discussion with the parties during a telephone conference, the Court granted the plaintiff's Motion to Continue Trial and a new Scheduling Order was issued.⁵

On September 6, 2017, the plaintiff filed the present Motion to Continue arguing that the Court should continue the hearings on the defendants Motion for Partial Summary Judgment and Motion in Limine until after the new cut-off dates for expert designations, reports, and discovery have expired. The plaintiff contends that

² Rec. Doc. 27

³ Rec. Doc. 28

⁴ Rec. Doc. 35

⁵ Rec. Doc. 46

her recent surgery changes the extent in which medical testimony is necessary to properly address her loss of earnings claim. In opposition, the defendants argue that the Court should not continue the hearings because the plaintiff's potential new experts and evidence should be excluded. However, the Court finds that the defendant's argument is based on a potential Rule 26 violation that is not currently before the Court.

It is well settled that the Court considers four factors to determine whether an expert should be excluded: "(1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice."⁶ However, an opposition to a motion to continue a hearing is not the proper method to raise this issue because the merits of the defendants' Motion in Limine and Motion for Partial Summary Judgment are not currently before this Court.

In the plaintiff's motion, the plaintiff merely seeks to continue the hearings on the defendants' motions and does not seek the Court to rule on the substance of the motions or the validity of possible new discovery. The defendants can raise their contentions when their Motion in Limine and Motion for Partial Summary Judgment are heard, but at this time the Court will not address the substance of the motions or

⁶ *Hamburger v. State Farm Mut. Auto. Ins. Co.*, 361 F.3d 875, 822 (5th Cir. 2004)

the validity of potential new discovery. Therefore, based on the arguments presented the defendants did not show good cause why the hearings should not be continued. Accordingly,

IT IS ORDERED that the plaintiff's Motion to Continue Hearings on Defendant's Motion for Summary Judgment and Motion in Limine [Rec. Doc. 47] is GRANTED.

Signed at Lafayette, Louisiana, this 19th day of September 2017.



PATRICK J. HANNA
UNITED STATES MAGISTRATE JUDGE