

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LOWANA SHANELL DUMAS,

Plaintiff,

v.

Case No. 10-12661

HURLEY MEDICAL CENTER, et al.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO STRIKE AFFIDAVITS

On July 11, 2011, Plaintiff Lowana Shanell Dumas filed an affidavit containing certain allegations against Defendant Marlana Miller. On July 19, 2011, Plaintiff filed two additional affidavits containing further allegations against Defendants Janice Anderson and Emily Mahank. On the same day, Defendants Hurley Medical Center, David Szczepanski, Vanessa Nelson, Jay Kitson, Dwayne Parker, Sheila Moore, Kristen Deloney, Marlana Miller, Janice Anderson, Javonka Thorns, Emily Mahank, and Brandy Marsh (collectively "Hurley Defendants"), moved to strike the affidavits as either improper attempts at discovery or improper attempts to amend Plaintiff's second amended complaint. On July 21, 2011, Plaintiff responded to the motion to strike and filed an additional exhibit. Although the court views the affidavits as an attempt to bolster the factual basis of Plaintiff's response to all Defendants' motions to dismiss, the court will nonetheless strike the motions as improvidently filed. In their opening sentences, the affidavits purport to save the individual Defendants whose actions they address from the unnecessary burden of personally attending a hearing before this

court. This indicates that Plaintiff labors under the misconception that an evidentiary hearing is currently scheduled in this case. Plaintiff's response further confirms this by citation to Federal Rule of Civil Procedure 56, which governs motions for summary judgment—for which evidence must be presented. In contrast, the hearing scheduled for August 3, 2011, will address only the legal adequacy of Plaintiff's second amended complaint. All factual assertions must be accepted as true for purposes of deciding motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Tackett v. M&G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009). Therefore, the affidavits are improvidently filed, whatever Plaintiff's reason. Accordingly,

IT IS ORDERED that Hurley Defendants' motion to strike [Dkt. # 65] is GRANTED.

IT IS FURTHER ORDERED that the Clerk of the Court is DIRECTED to strike Plaintiff's affidavits [Dkt. 62, 63, 64, 67] as improvidently filed.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 26, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 26, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522