

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS LEROY FULLER (#237590),

Plaintiff,

CASE NO. 2:13-CV-13171

JUDGE MATTHEW F. LEITMAN

MAGISTRATE JUDGE ANTHONY P. PATTI

v.

DAVID KERR,
GARY DAVIS,
JANET COCHRAN and
JOHN HAWLEY,

Defendants.

**ORDER DENYING AS MOOT PLAINTIFF'S NOVEMBER 10, 2014
MOTION FOR PROTECTIVE ORDER STAYING THE TAKING OF
PLAINTIFF'S DEPOSITION (DE 42)**

A. Background

Thomas Leroy Fuller (#237590) is currently incarcerated at the MDOC's Marquette Branch Prison (MBP). Fuller initiated this lawsuit on July 23, 2013 while incarcerated at the Carson City Correctional Facility (DRF). DE 1. He is proceeding *in forma pauperis*. See DE 2, DE 4.

The Court granted Plaintiff leave to file a first amended complaint (DE 7), which he did on October 21, 2013 (DE 6). Plaintiff was also given leave to file a

second amended complaint. *See* DE 17, DE 19. The second amended complaint was filed on September 23, 2014 and names as defendants Kerr, Davis, Cochran and Hawley. DE 26; *see also* DE 25. Each of these defendants has appeared. DE 11, DE 40.

B. Instant Matter

Currently, there are several motions pending before the Court. *See* DE 20, DE 38, DE 42, DE 47, DE 48, DE 49 and DE 52. At this time, the Court will address the pending motion which concerns the taking of Plaintiff's deposition. *See* DE 42.

By way of background, on October 14, 2014, this Court entered an order (DE 35) granting Defendants' September 16, 2014 motion for leave to take Plaintiff's deposition pursuant to Fed. R. Civ. P. 30(a)(2)(B) (DE 21). On November 10, 2014, after the Court entered its order (DE 35), Plaintiff filed several matters, including:

- (a) a response (DE 41) to Defendants' motion (DE 21),
- (b) a supplemental motion for protective order staying the taking of Plaintiff's deposition (DE 42) and
- (c) objections (DE 44) to the Court's October 14, 2014 orders (DE 34, DE 35).

See DE 43 (Certificate of Service). On December 3, 2014, Judge Leitman entered an order (DE 46) overruling Plaintiff's objections (DE 44).

C. Discussion

Within his response (DE 41) to Defendants' motion for leave to take Plaintiff's deposition (DE 21), Plaintiff explains that Emanuel S. Coates (#155262) "is a paralegal and ha[s] thus far, provided Plaintiff with legal assistance." DE 41 at 2 ¶ 4. Plaintiff asks the Court to (1) "stay the taking of his deposition by the Defendants until such time [as] the Court has ruled on his motion [DE 38] and supplemental motion [DE 42] for protective orders[,]" (2) "enter an Order allowing Prisoner Coates¹ to attend the deposition of Plaintiff when it occurs[,]" and (3) "Order the defendants to provide Plaintiff with a Certified copy of the deposition at no cost to him." DE 41 at 2.²

¹Emanuel S. Coates (#155262) is currently incarcerated at DRF. See www.michigan.gov/corrections, "Offender Search."

²Plaintiff's request for Coates to attend the deposition and Plaintiff's request to receive a copy of the deposition transcript at no cost are only contained within Plaintiff's response (DE 41) and are, therefore, not ruled upon in the foregoing order. See Fed. R. Civ. P. 7(b)(1) ("A request for a court order must be made by motion."), *Grosvenor v. Qwest Corp.*, 733 F.3d 990, 998 (10th Cir. 2013) ("Arguments asserted in response to a motion are generally not considered requests for an order."). Even so, the Court suspects the issue of Coates's attendance at the deposition is now moot. Moreover, the Court notes that Plaintiff may request a copy of the deposition transcript at his own expense.

Looking to Plaintiff's supplemental motion for a protective order staying the taking of Plaintiff's deposition (DE 42), it appears he would like the Court to stay the taking of his deposition until the Court rules upon his objections (DE 44). *See* DE 42 at 2 ¶ 4. In sum, Plaintiff's November 10, 2014 motion requests entry of an order "staying the taking of Plaintiff's deposition until further Order of the Court." DE 42 at 2.

Upon consideration, Plaintiff's November 10, 2014 supplemental motion for a protective order staying the taking of Plaintiff's deposition (DE 42) is denied as moot. As evident from one of the attachments (DE 48-8) to Defendants' December 31, 2014 motion for summary judgment (DE 48), Plaintiff's deposition was taken at DRF on November 13, 2014. In addition, on December 3, 2014, Judge Leitman entered an order (DE 46) overruling Plaintiff's objections (DE 44).

D. Order

Accordingly, Plaintiff's November 10, 2014 supplemental motion for protective order staying the taking of Plaintiff's deposition (DE 42) is DENIED AS MOOT. The other motions currently pending before this Court (DE 20, DE 38, DE 47, DE 48, DE 49 and DE 52) will be addressed under separate cover.

IT IS SO ORDERED.

Dated: March 24, 2015

s/Anthony P. Patti
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

I certify that a copy of this document was sent to parties of record on Tuesday, March 24, 2015, electronically and/or by U.S. Mail.

s/Michael L. Williams
Case Manager to the
Honorable Anthony P. Patti