

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Nathaniel H. Brent *et al.*,

Plaintiff,

Case No. 11-cv-10724

v.

Judith E. Levy
United States District Judge

Wayne County DHS *et al.*,

Mag. Judge Mona K. Majzoub

Defendants.

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ORDER DENYING PLAINTIFFS' MOTION TO STRIKE [239]

On May 31, 2016, defendants Decormier-McFarland, Lamar, Sampson, Trice, and Wenk filed their motion for judgment on the pleadings. (Dkt. 230.) On June 20, 2016, plaintiffs filed their response in opposition. (Dkt. 235.) On July 5, 2016, defendants filed their reply to plaintiffs' response. (Dkt. 238.)

Now before the Court is plaintiffs' motion to strike defendants' reply brief (Dkt. 239), defendants' opposition (Dkt. 241), and plaintiff's reply. (Dkt. 242.) For the reasons provided below, plaintiffs' motion is DENIED.

Plaintiffs argue that defendants' reply brief should be stricken because it was submitted well past the June 27, 2016 deadline set out in the Court's order issued June 1, 2016. (Dkt. 239 at 2, 4; *see* Dkt. 232.) Defendants counter that in telephonic conferences subsequent to the June 1, 2016 order a new briefing schedule was established that superseded the one laid out in the June 1, 2016 order. (Dkt. 241 at 4-5.) Defendants further contend that, despite the new schedule for briefing their motion, plaintiffs filed their opposition on June 20, 2016, rather than on July 11, 2016, which had been established as the new date for plaintiffs' opposition to be filed. (*Id.* at 5.) In recognition of the local rule governing the briefing of dispositive motions, defendants also assert that they filed their response on July 5, 2016, which was the timely reply under L.R. 7.1(e)(1)(C) to an opposition brief filed on June 20, 2016. (*Id.* at 6.)

Defendants are correct in their recounting of the exchanges at the two conferences held on the record. On June 3, 2016, while addressing concerns regarding discovery demanded by plaintiffs in order to respond to defendants' potentially dispositive motion, the following exchange took place:

The Court: But when is your response due, Mr. Brent, right now?

Mr. Brent: The 21st. So it's before [defendants] want[] to actually give me the discovery.

The Court: Okay. Then I'm going to extend your time to July 10th, if that's a weekday.

Ms. Geminick [defendants' counsel]: That's actually a Sunday.

The Court: Okay, the 11th then.

(Transcript, June 3, 2016, 23:2-9.) This change to the scheduling order was confirmed later at the telephonic conference on June 13, 2016:

Mr. Brent: I just wanted to clarify that, you know, what my schedule was. Whether it was going to be done on the 20th or whether my paper for Ms. Geminick was due on the 20th or what the date changed to.

The Court: I don't have that right –

Ms. Geminick: I do. I have the email in front of me. It set a date for – my [discovery] responses were due on the 27th and Brent's brief is due July 11th.

The Court: Okay.

(Transcript, June 13, 2016, 10:23-11:5.) The record clearly demonstrates that plaintiffs were granted until July 11, 2016, but the record is silent on any change to the deadline for defendants to submit a reply to plaintiffs' opposition.

Local Rule 7.1(e)(1) governs the briefing schedule for dispositive motions, including defendants' motion for judgment on the pleadings, and states in part: "[i]f filed, a reply brief supporting a dispositive motion must be filed within fourteen days after service of the response" With allowance for the July 4 holiday, defendants filed their reply brief fourteen days after service of plaintiffs' response brief. The record demonstrates that the parties sought and received clarity on when plaintiffs' response brief would be due, and the extension of that date to July 11, 2016, quite obviously superseded the June 1, 2016 order, which required plaintiffs' response by June 20, 2016 and defendants' reply by June 27, 2016. Plaintiffs opted to submit their response brief earlier than July 11, 2016, and that effectively moved the reply date earlier, as well. But just because plaintiffs unilaterally chose to file their response by the original date did not resurrect the June 1, 2016 order. The record plainly shows that July 11, 2016 was plaintiffs' new deadline to file their response. And in the absence of a specific Court order setting a deadline for the reply brief, defendants filed their reply in accordance with the local rule.

Plaintiffs' motion to strike defendants' reply brief (Dkt. 238) is
DENIED.

IT IS SO ORDERED.

Dated: August 30, 2016
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 30, 2016.

s/Kelly Winslow for
FELICIA M. MOSES
Case Manager