

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MAX ALLEN,) CASE NO. 4:07CV3131
)
 Plaintiff,)
)
 v.) ORDER
)
 SANTEE COMMUNITY SCHOOL and)
 MORRIS BATES, Individually and as)
 Superintendent of Santee Community)
 Schools,)
)
 Defendants.)

This matter is before the Court on the Plaintiff's Motion to Strike Motion for Summary Judgment (Filing No. 29), the Defendants' Motion to Amend Scheduling Order (Filing No. 30), and the Plaintiff's Objection to the Motion to Amend¹ (Filing No. 31).

This case was originally scheduled to go to trial on November 4, 2008. The final progression order setting the trial date also set an August 29, 2008, deadline for the parties to file motions for summary judgment (Filing No. 20). After the expiration of the August 29, 2008, deadline the Defendants filed their initial Motion to Amend Scheduling Order on September 4, 2008, requesting amendment to the Scheduling Order with respect only to the dates of the trial and the pretrial conference (Filing No. 24). In his Order granting that motion, Magistrate Judge Gossett continued the trial and final pretrial conference and extended “[a]ll progression order deadlines **which have not already expired**” for 130 days (Filing No. 25, emphasis added). Defendants then proceeded to file a Motion for Summary Judgment on December 2, 2008 (Filing No. 26).

¹“The party opposing a motion shall not file an “answer,” or “opposition,” “objection,” or “response” to a motion, or any similarly titled responsive pleading, instead shall file a paginated brief which concisely states the reasons for opposing the motion and cites the authorities relied upon.” NECivR 7.1(b)(1)(A). As such, the Court shall strike Plaintiff's objection as an improper filing.

The Plaintiff has moved to strike the Defendants' Motion for Summary Judgment on the bases of untimeliness and improper form (Filing No. 29). The Defendants' response has been in the form of a second motion to amend the scheduling order to allow for the filing of their summary judgment motion, instanter. The Court finds that the Defendants have failed to show good cause for their failure to file their motion for summary judgment on or before the August 29, 2008, deadline or to request an extension of that deadline prior to its expiration. For this reason, the Defendants' Motion for Summary Judgment, along with the supportive brief and index of evidence, will be stricken and the Court's scheduling order will not be further modified. Accordingly,

IT IS ORDERED:

1. The Plaintiff's Motion to Strike Motion for Summary Judgment (Filing No. 29) is granted;
2. The Clerk's Office shall strike the Defendants' Motion for Summary Judgment (Filing No. 26), Index of Evidence (Filing No. 27), and Brief (Filing No. 28);
3. The Defendants' Motion to Amend Scheduling Order (Filing No. 30) is denied; and
4. The Clerk's Office shall strike the Plaintiff's Objection to the Motion to Amend (Filing No. 31).

DATED this 23rd day of December, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge