

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, MATTHEW WILSON )  
and BRECK ARCHER )

Plaintiffs, )

v. )

DUKE UNIVERSITY, et al., )

Defendants. )

1:07CV953

ORDER

BEATY, District Judge.

This matter is before the Court on a Motion [Doc. #337] filed by Plaintiffs Ryan McFadyen, Matthew Wilson, and Breck Archer (“Plaintiffs”) seeking to stay further proceedings on the Joint Motion for Judgment on the Pleadings (“Joint Motion”) [Doc. #335] filed by Defendants Tara Levicy, Gary Smith, Duke University, and Duke University Health System, Inc. (“the Duke Defendants”). The Duke Defendants filed their Joint Motion seeking dismissal of certain claims against them in light of the decision issued by the United States Court of Appeals for the Fourth Circuit on an interlocutory appeal filed by other Defendants in this case. Plaintiffs seek to stay further proceedings on the Duke Defendants’ Joint Motion on the grounds that Plaintiffs expect to file a petition for writ of certiorari asking the United States Supreme Court to reverse the Fourth Circuit’s decision. Currently, Plaintiff’s petition for writ of certiorari is due by May 30, 2013. In the alternative to granting a stay until all appellate proceedings conclude, Plaintiffs request that the Court extend the deadline for Plaintiffs to respond to the Duke Defendants’ Joint Motion by sixty (60) days to allow Plaintiffs to “take into

account the issues raised in Plaintiffs' petition for writ of certiorari." [Pls.' Mot. at 2, [Doc. #337]).

The Duke Defendants oppose Plaintiffs' Motion to the extent that Plaintiffs seek to stay all further proceedings on the Duke Defendants' Joint Motion. The Duke Defendants contend that even if Plaintiffs "expect" to file a petition for writ of certiorari, Plaintiffs should timely respond to the Duke Defendants' Joint Motion before this Court. As such, the Duke Defendants ask that the Court grant Plaintiffs' alternative relief and extend Plaintiffs' time to respond to the Duke Defendants' Joint Motion by sixty (60) days from the original Response deadline of March 25, 2013.

In addition to the Duke Defendants' Joint Motion, the Court notes that Defendant Linwood Wilson, *pro se*, has filed two Motions [Doc. #324, #330] seeking to dismiss certain claims against him based on the Fourth Circuit's decision in this case. Defendant Wilson's Motions to Dismiss are presently pending before the Court. The Court further notes that in response to Defendant Wilson's first Motion to Dismiss, Plaintiffs filed a document [Doc. #327] captioned as "Plaintiffs' Opposition to and Motion to Stay Defendant Linwood Wilson's Motion to Dismiss Counts 5 and 18," wherein Plaintiffs ask the Court to stay the briefing schedule on Defendant Wilson's Motion to Dismiss pending resolution of Plaintiffs' petition for rehearing en banc before the Fourth Circuit and expected petition for writ of certiorari to the Supreme Court. In light of Plaintiffs' request for a stay regarding the Motions to Dismiss, Defendant Wilson now has filed a Motion [Doc. #339] to join the Duke Defendants' Response [Doc. #338] in opposition to Plaintiffs' Motion to stay the proceedings in this case.

In considering Plaintiffs' Motion [Doc. #337], the Court notes that the Fourth Circuit issued its Mandate in this case on January 23, 2013, following the denial of Plaintiffs' petition for rehearing en banc. As such, the Fourth Circuit's decision is presently binding on the Court. Given the length of time this case has been pending before this Court, the Court finds that justice would not be served by further delaying this case in the form of a complete stay of the proceedings on the Duke Defendants' Joint Motion. Therefore, the Court will grant in part and deny in part Plaintiffs' Motion [Doc. #337] as set forth herein. Specifically, to the extent that Plaintiffs seek to stay all further proceedings on the Duke Defendants' Joint Motion until the conclusion of the expected appellate proceedings before the United States Supreme Court, the Court will deny that request. However, to the extent that Plaintiffs, in the alternative, seek an extension of time within which to file a Response to the Duke Defendants' Joint Motion, the Court will grant that request and will order that Plaintiffs shall file any such Response on or before May 30, 2013.

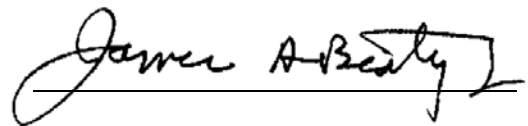
In addition, to the extent that Defendant Linwood Wilson has filed a Motion [Doc. #339] to join the Duke Defendants' Response [Doc. #338] in opposition to Plaintiffs' Motion to stay the proceedings, the Court will grant Defendant Wilson's Motion. Furthermore, to avoid additional delay in these proceedings, the Court will order that to the extent that Plaintiffs intend to file any substantive Response to Defendant Wilson's pending Motions to Dismiss [Doc. #324, #330], Plaintiffs shall file any such Response on or before May 30, 2013.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Stay Proceedings on Defendants Tara Levicy, Gary Smith, Duke University, and Duke University Health System's

Joint Motion for Judgment on the Pleadings [Doc. #337] is GRANTED IN PART and DENIED IN PART as set forth herein. Specifically, IT IS ORDERED that to the extent that Plaintiffs seek to stay all further proceedings on the Duke Defendants' Joint Motion for Judgment on the Pleadings [Doc. #335] until the conclusion of the expected appellate proceedings before the United States Supreme Court, that request is DENIED. IT IS FURTHER ORDERED that to the extent that Plaintiffs, in the alternative, seek an extension of time within which to file a Response to the Duke Defendants' Joint Motion for Judgment on the Pleadings [Doc. #335], that request is GRANTED, and Plaintiffs shall file any such Response on or before May 30, 2013.

IT IS FURTHER ORDERED that Defendant Linwood Wilson's Motion [Doc. #339] to join the Duke Defendants' Response [Doc. #338] in opposition to Plaintiffs' Motion [Doc. #337] is GRANTED. As such, IT IS ORDERED that to the extent that Plaintiffs intend to file any substantive Response to Defendant Wilson's pending Motions to Dismiss [Doc. #324, #330], Plaintiffs shall file any such Response on or before May 30, 2013.

This, the 17<sup>th</sup> day of May, 2013.

A handwritten signature in black ink that reads "James A. Beatty". The signature is written in a cursive style and is enclosed within a rectangular box that has a horizontal line extending to the right from its bottom-right corner.

United States District Judge