

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NANCY EILEEN MICK,

Plaintiff,

vs.

Civil Action 2:08-CV-990
Judge Frost
Magistrate Judge King

VERNON P. STANFORTH, et al.,

Defendants.

OPINION AND ORDER

This is a civil rights action under 42 U.S.C. §1983 in which plaintiff, the administratrix of the Estate of Lori Bailey, alleges that defendants' actions in connection with their failure to enforce a civil protection order obtained by the decedent against her husband resulted in the latter's kidnaping and murder of the decedent, as well as property damage to the residence.

On April 27, 2009 *Plaintiff's Motion to Preserve Evidence*, Doc. No. 31 ("*Plaintiff's Motion*"), was filed. Plaintiffs ask this Court to issue an order preserving any and all evidence in the Fayette County Sheriff's Office's possession that in any way relates to (1) the kidnaping/terrorizing of Lori A. Bailey on November 1, 2006; (2) the murder-suicide that occurred on November 1, 2006, involving John and Lori Bailey; and (3) "the service of the Civil Protection Order on October 25, 2006 at the Bailey residence." *Plaintiff's Motion*, pp. 1-2. Plaintiff represents that this evidence is critical to her claims in this case. *Id.* at 2. Defendants have not responded to *Plaintiff's Motion*.

As a party to this action, defendants, including Vernon P.

Stanforth, the Sheriff of Fayette County, Ohio, have an obligation to preserve evidence that is relevant to the litigation. See, e.g., *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D. N.Y. 2003) (quoting *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 436 (2d Cir. 2001)). There is nothing before the Court to suggest that defendants have not or will not comply with this obligation and that destruction of relevant documents is imminent. Moreover, in the event that evidence is purposely destroyed, plaintiff may seek appropriate sanctions. Under these circumstances, the Court concludes that plaintiff's request is unnecessary at this time.

WHEREUPON, *Plaintiff's Motion to Preserve Evidence*, Doc. No. 31, is **DENIED** without prejudice to renewal if otherwise appropriate.

June 15, 2009

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge